

Volume 4

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE WILLIAM H. ALSUP

WAYMO, LLC )  
vs. Plaintiff, )  
                ) No. C 17-00939 WHA  
                )  
UBER TECHNOLOGIES, LLC., OTTO )  
TRUCKING, LLC, and OTTOMOTTO, LLC, )  
                ) San Francisco, California  
Defendants.      ) Wednesday  
                ) February 7, 2018  
                ) 7:30 a.m.  
\_\_\_\_\_  
)

TRANSCRIPT OF PROCEEDINGS

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## **P R O C E E D I N G S**

**FEBRUARY 7, 2018**

7:31 A.M.

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(Proceedings held in open court, outside  
the presence and hearing of the jury.)

**THE COURT:** Thank you. Welcome. Please be seated.

**THE CLERK:** Calling Civil Action 17-979, Waymo, LLC,  
v. Uber Technologies, Inc., et al.

Counsel, please approach the podium and state your appearances for the record.

**THE COURT:** Just the lead lawyer. You don't need the long list.

**MR. VERHOEVEN:** Good morning, Your Honor. Charles Verhoeven for Waymo

**THE COURT:** Thank you.

**MS. DUNN:** Your Honor Karen Dunn for Uber

**THE COURT:** All right. The record will show there are at least eight other lawyers at counsel table. They have been previously identified unless there is someone new. If there's someone new, I'd like to identify them.

**MR. VERHOEVEN:** No, Your Honor.

**MS. DUNN:** No, Your Honor.

**THE COURT:** All right. On Gurley, what is -- where are we on Gurley?

**MR. VERHOEVEN:** One minute, Your Honor.

1 (Counsel confer off the record.)

2           **MR. VERHOEVEN:** Go ahead. Just tell the judge what  
3 you're --

4           **MS. DUNN:** Your Honor, so it's possible this issue has  
5 been resolved, but I want to make certain of that.

6           We got Waymo's filing, and they do say that they won't ask  
7 Mr. Gurley about receipt of the Stroz report and they won't ask  
8 improper questions. I just want to make sure, which is what I  
9 just said to Mr. Verhoeven, that his questioning does not verge  
10 into asking Mr. Gurley for his opinion that he was misled or  
11 that somebody committed fraud on him, because that would  
12 obviously be an opinion formed after this lawsuit began and, in  
13 fact, after he received the Stroz report, even if they don't  
14 ask about that.

15           As I said, this could be resolved.

16           **THE COURT:** Okay. So what's Mr. Verhoeven say?

17           **MR. VERHOEVEN:** I don't intend to go into his opinions  
18 today of what happened before. I intend to ask him about what  
19 happened before. And so --

20           **THE COURT:** Are you going to ask him anything along  
21 the lines of, If you had been told ABC, would that have been  
22 material?

23           I have a feeling that's what you have in mind.

24           **MR. VERHOEVEN:** I certainly would like to, but I'm not  
25 going to in the interest of compromise.

1           **THE COURT:** Well --

2           **MR. VERHOEVEN:** Because Your Honor said -- Your  
3 Honor's given me guidance earlier that you didn't want that, so  
4 I'm not going to do it.

5           **THE COURT:** Well, what can he possibly add to the  
6 picture here then?

7           **MR. VERHOEVEN:** He can add, Your Honor, that he was  
8 told that the Stroz due diligence -- he was told by -- the  
9 witnesses are all sequestered.

10          He was told by Mr. Kalanick and Mr. Poetzscher that they  
11 had received a report from Stroz, and the report came back  
12 clean. And that was not true. He hadn't received a report --

13          **THE COURT:** Well, that --

14          **MR. VERHOEVEN:** -- and the report had not come back  
15 clean.

16          **THE COURT:** Okay. Let's just stop. He's going to  
17 recount a conversation with Kalanick, where Kalanick says, "We  
18 did the report; it came back clean"?

19          **MR. VERHOEVEN:** Not just a conversation. It was a  
20 presentation to the board that was made to induce them to  
21 approve this deal.

22          **THE COURT:** All right. What's wrong with that part?

23          **MS. DUNN:** Nothing is specifically wrong as an  
24 evidentiary matter. It doesn't seem, as Your Honor suggested  
25 at the beginning, that that bears on the actual issues in this

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1 case.

2 It seems strange to bring in Mr. Gurley just so he can  
3 say, I was -- and, actually, he's a little equivocal about what  
4 he was actually told. That he came away with a positive  
5 impression of the diligence, I think that's true.

6 I don't actually think anybody denies that they went to  
7 the board meeting and said, "We should do this deal."

8 You know, it does not seem like a productive use of time,  
9 which is why I thought perhaps they were bringing him for a  
10 different or additional reason since that seems not so  
11 worthwhile to me or relevant.

12 **MR. VERHOEVEN:** Your Honor, they moved in limine to  
13 exclude this very testimony, and Your Honor denied it. I don't  
14 know why we're rearguing this right now.

15 **THE COURT:** Well, I'm sure I denied it without  
16 prejudice to individual questions; right? Surely I did.

17 So the proffer that Mr. Verhoeven has given us is  
18 acceptable to me. It has some relevance to show that  
19 gimmickry, I guess is the right word, was afoot to -- and it  
20 may bear on the credibility of the witness who's on the stand.

21 So I think -- I think it has some relevance. But it is  
22 removed from the core issue, which is did Uber use or disclose  
23 the eight trade secrets?

24 But if you stick to the offer of proof that you've given  
25 me, I don't think it will take up much time, and I think it

1 will have some tangential relevance. And so I'm going to say  
2 that much is okay. All right?

3 **MS. DUNN:** That's fair, Your Honor. Thank you very  
4 much.

5 **THE COURT:** All right. Thank you.

6 Okay. Any other issues before we get rolling here?

7 **MR. RABIN:** Your Honor, just one housekeeping issue,  
8 which is yesterday when we presented the objection that was  
9 overruled as it related to the Stroz documents, the parties  
10 meet late at night to meet and confer, and it would be helpful  
11 if we had agreement that we do not need to keep asserting the  
12 overruled objection to the various Stroz documents for record  
13 purposes that we -- there's specifically two objections.

14 One was the objections that were articulated in the brief  
15 that was filed and overruled yesterday.

16 And the second is simply the ongoing objection that we had  
17 had to the order that ultimately went up to the Federal Circuit  
18 about the privilege issues from pre-April of 2015.

19 And as long as our understanding is we have, you know,  
20 objection to -- on those two bases, to those Stroz documents,  
21 and that they're overruled, we don't need to continue making  
22 them. But I wanted to make sure that that was all right with  
23 Your Honor.

24 **MR. EISEMAN:** We have no objection to that, Your  
25 Honor.

1                   **THE COURT:** Well, the issue that went up to the  
2 Federal Circuit, of course you've already lost on that. I  
3 don't know why you would want to preserve that. You did go up.  
4 But, nevertheless, that will be reserved without having to  
5 state it each time.

6                   And the second one, where -- my main ruling yesterday was  
7 not -- did not reach every single possible question, but it did  
8 say the following: Namely, that Uber is the one who set up  
9 this elaborate procedure with the due diligence report. And  
10 even looking at it from this most positive light and most  
11 generous light, Uber was trying to get at the truth of, did  
12 Levandowski have trade secrets?

13                  And so it would -- to now say that it's hearsay and not  
14 reliable is a contradiction of terms. Uber wanted that  
15 information.

16                  So my view is that everything that they investigated at  
17 Stroz under the due diligence regime is accurate as to what was  
18 said to Stroz. So I don't think you have to object to that  
19 repeatedly. That ruling you can reserve on and take an appeal  
20 on that.

21                  But -- and here's the big but -- there could be hearsay  
22 within hearsay problems that you need to draw to my attention.  
23 And those are question by question, document by document, and  
24 you have to bring that up.

25                  **MR. RABIN:** Understood, Your Honor.

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1           **THE COURT:** All right. Okay.

2           **MR. EISEMAN:** That's fine, Your Honor. And we have  
3 one related Stroz issue that may come up with a witness later  
4 today. That's not the reports and the documents that you ruled  
5 on yesterday but instead some documents from the Stroz  
6 relativity database, some documents that came from  
7 Mr. Levandowski. And --

8           **THE COURT:** All right.

9           **MR. EISEMAN:** -- if Your Honor has time to deal with  
10 that right now, Mr. Schmidt will handle that.

11           **THE COURT:** Give me the one -- two-sentence version of  
12 what the problem is.

13           **MR. EISEMAN:** The problem is that all we want to offer  
14 these documents into evidence for is to show that they came  
15 from Mr. Levandowski's computer and they were at Stroz.

16           We're not offering them for the truth of what's in the  
17 documents; simply it's a matter of notice that the documents  
18 came from Mr. Levandowski. And we're trying to avoid having to  
19 call a witness to go through document by document. And that's  
20 the issue.

21           **THE COURT:** Why would it even matter?

22           **MR. EISEMAN:** Because it's important to know that  
23 documents that were on -- that were on Mr. Levandowski's  
24 computer are Google documents.

25           **THE COURT:** Well, are they any of the eight trade

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1 secrets? Somebody back there says yes.

2           **MR. EISEMAN:** That's why I wanted Mr. Schmidt to  
3 handle it.

4           **MR. SCHMIDT:** Your Honor, the answer is yes. Amongst  
5 these documents that Stroz recovered from Mr. Levandowski's  
6 computer are documents that not only reflect the eight trade  
7 secrets --

8           **THE COURT:** Huh-uh. You just used a buzz word,  
9 "reflect."

10          **MR. SCHMIDT:** Well --

11          **THE COURT:** How about actually state as opposed to  
12 reflect? Do they state any of these trade secrets?

13          **MR. SCHMIDT:** Well, Your Honor, some of the documents  
14 are themselves trade secrets. Trade Secret 90 --

15          **THE COURT:** You are using such weasely language.  
16 Look, let's simplify. Why won't you just stipulate these  
17 documents came from his computer?

18          **MR. RABIN:** We have no problem stipulating that  
19 certain documents came from his computer. The problem we have  
20 is when we submit them into evidence, you have to lay the  
21 foundation for what they actually are. Is it a picture of a  
22 PCB board or is it a picture of a -- you know, part of a  
23 dollhouse?

24          And it's not fair for a jury to receive documents into  
25 evidence that they say came from Anthony Levandowski's computer

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1 without a witness actually identifying what they are.

2 Your Honor's question raised the point. They're going to  
3 try and tell the jury, "Look, this document that came from his  
4 computer must have been a trade secret."

5 But unless there's a witness who can sponsor what that  
6 document actually is, then it can't come into evidence.

7 **THE COURT:** All right. Uber's right on this one. You  
8 are making a reasonable request, but it's not one that you're  
9 entitled to. It's just reasonable to try to speed the trial  
10 along.

11 But you've got to do it the hard way. Bring in a witness,  
12 burn up some of your time. Uber's trying to force you to burn  
13 up your time, but they have the right to do that.

14 I'm sorry. I'm not going to carry your water for you. So  
15 that's the end of that story.

16 So bring in a witness.

17 **MR. SCHMIDT:** All right, Your Honor.

18 **THE COURT:** All right. Anything I can -- any more  
19 damage I can do this morning?

20 **MR. RABIN:** Thank you, Your Honor.

21 **MR. EISEMAN:** Your Honor, if I could just hand up a  
22 deposition transcript from Ms. Fulginiti, who we may be playing  
23 later today. There are no objections from the other side, so  
24 we just want Your Honor to have a copy.

25 **THE COURT:** All right. So I don't need to review this

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1 for purposes of in or out; right?

2 **MR. EISEMAN:** You don't, Your Honor.

3 **THE COURT:** All right. Thank you.

4 Did you get your deposition teed up ready to go on that  
5 witness that I did? McClendon, I think is his name.

6 **MR. JUDAH:** There is an update on that.

7 **MR. VERHOEVEN:** In light of your rulings, Your Honor,  
8 and in the interest of our short time, we're not going to play  
9 that deposition.

10 **THE COURT:** You mean I wasted all that time. I went  
11 through it, it's an in, out, in, out, 403. And now you're --  
12 all right. Okay. Thank you. It's okay. You have the right  
13 to do that.

14 All right. Go ahead.

15 **MR. JUDAH:** All right. Your Honor, another  
16 housekeeping. Yesterday you requested the actual audio CDs of  
17 the witness, Mr. Bares, who testified. And we have those.  
18 We'd like --

19 **THE COURT:** It's just the ones that were shown now;  
20 right? Don't put in extra stuff. Just the exact portions that  
21 were shown to the jury.

22 **MR. JUDAH:** That's correct.

23 **THE COURT:** All right. Go ahead. Please -- is there  
24 an identifying tag on there?

25 **MR. JUDAH:** There is.

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1           **THE COURT:** What is it?

2           **MR. JUDAH:** "Deposition of John Bares, played on  
3 February 6th, 2018."

4           **THE COURT:** Thank you.

5           **MR. RABIN:** Counsel, do you have a copy for us so we  
6 can check it?

7           And, Your Honor, if we can just hold off putting in this  
8 evidence until we have a chance to review. I'm sure it's fine,  
9 but we would just want to make sure this was actually --

10          **THE COURT:** Well, wait. Let's be clear on this. It's  
11 not going to go into the jury room. This is for purposes of  
12 the court of appeals.

13          **MR. RABIN:** Right.

14          **THE COURT:** It's not going to go into the jury room.

15          If the jury wants to have a read-back, then we bring them  
16 out here and we might replay it. But it is not an item that  
17 goes into the jury room. All right.

18          **MR. RABIN:** Thank you, Your Honor.

19          **MR. VERHOEVEN:** I have one last thing, Your Honor.

20          **THE COURT:** Sure.

21          **MR. VERHOEVEN:** This relates to Mr. Kalanick and his  
22 upcoming testimony.

23          Mr. Fisher, can you put up TX-4690 on the screen.

24          This relates to the "Greed is Good" video, Your Honor.

25          **THE COURT:** The who?

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1           **MR. VERHOEVEN:** The "Greed is Good" video.

2           **THE COURT:** Oh, "Greed is Good," yes.

3           **MR. VERHOEVEN:** Yes.

4           **THE COURT:** All right.

5           **MR. VERHOEVEN:** One second, Your Honor.

6           It's TX-4690.

7           **THE COURT:** I sure wish that these technical people  
8 could grease the skids better so that there won't -- it really  
9 takes away from your presentation when it takes ten seconds to  
10 bring it up.

11           **MR. VERHOEVEN:** Well, Mr. Fisher --

12           **THE COURT:** You should read the riot act, and you  
13 should read the riot act.

14           **MR. VERHOEVEN:** I want to say, in Mr. Fisher's  
15 defense, he's the best in the business.

16           **THE COURT:** All right.

17           **MR. VERHOEVEN:** So this is, Your Honor, something that  
18 was created in discovery in this case, Your Honor.

19           **THE COURT:** What is it?

20           **MR. VERHOEVEN:** And it's -- it was a forensic analysis  
21 of Mr. Kalanick's deleted text messages on his phone. And we  
22 recovered those. The parties together recovered those. And  
23 this is a list.

24           And the "Greed is Good" was a deleted text that we  
25 recovered. And this is an -- this is the -- a spreadsheet of

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1 these deleted texts.

2 And if you look at -- if we could pull up the "Greed is  
3 Good" one, Mr. Fisher. Can we pull it out or not?

4 **THE COURT:** Wait. Someone is --

5 **UNIDENTIFIED SPEAKER:** These text phone numbers are  
6 being shown to the whole gallery.

7 **MR. VERHOEVEN:** Let's bring it down from the gallery.

8 **THE COURT:** All right. So turn the public part off.

9 But what is your point?

10 **MR. VERHOEVEN:** There's a column that's -- that  
11 indicates whether or not the -- Mr. Kalanick read the texts.  
12 They can tell that from the forensic analysis.

13 And you can see -- are we back on?

14 **THE COURT:** There it is.

15 **MR. VERHOEVEN:** I'll represent to you that it says --

16 **THE COURT:** It says --

17 **MR. VERHOEVEN:** -- "Here's the speech you need to  
18 give, wink, wink." And then it's got the same link to "Greed  
19 is Good." And the status is it was read.

20 So I know there's going to be a fight. I didn't want to  
21 have this fight in front of the jury. He read it. The  
22 evidence shows he read it. The evidence produced by the other  
23 side --

24 **THE COURT:** Is this chart that you're showing me going  
25 to go into evidence?

1                   **MR. VERHOEVEN:** We can if we need to, Your Honor. It  
2 was created during discovery, but --

3                   **THE COURT:** Do you have a sponsoring witness for this  
4 chart?

5                   **MR. VERHOEVEN:** Well, I would hope we could work out a  
6 stipulation that this was -- this was something that was  
7 created by the attorneys as part of discovery to forensically  
8 recover the deleted texts. This is not something that should  
9 be disputed.

10                  **THE COURT:** All right. Ms. Dunn, what do you say?

11                  **MS. DUNN:** Well, the first thing I'll say is this was  
12 not disclosed to us at all in advance of Mr. Kalanick's  
13 testimony, what we just saw.

14                  **THE COURT:** Well, he said that you helped prepare the  
15 chart.

16                  **MS. DUNN:** I'm not denying that. It may well be true.  
17 But this is -- Mr. Kalanick's exhibits, exhibits related to an  
18 exam are supposed to be disclosed to us. This was not. There  
19 are, in fact, some times when late exhibits are disclosed at  
20 night. This was not.

21 I think, first of all, that is not appropriate --

22                  **THE COURT:** But he's not proposing to use it with  
23 Mr. Kalanick. I'm sure Kalanick has never seen that chart.

24                  **MR. VERHOEVEN:** Right.

25                  **THE COURT:** But he's trying to explain to me that

1 there is a good-faith basis for believing the witness on the  
2 stand read that "Greed is Good" text.

3 **MS. DUNN:** Your Honor, I have no problem -- okay. So  
4 let's just take a step back.

5 Our objection is that it would be prejudicial, and the  
6 point is to sway the jury, to play a movie. I mean, is anyone  
7 here aware that --

8 **THE COURT:** Well, but it was a movie that the two key  
9 actors in the case laughed about.

10 **MS. DUNN:** Well, Your Honor, that is not in evidence.

11 And I don't think that this forensic spreadsheet shows --  
12 maybe he read the text. It doesn't show that he clicked on the  
13 link. It doesn't show that he was very inspired by Michael  
14 Douglas's Academy Award-winning performance in *Wall Street*.

15 And the purpose of this, that Mr. Verhoeven is just dying  
16 to play a movie, another movie, I should say, for the jury --

17 **THE COURT:** What do you mean "another movie"?

18 **MR. SCHMIDT:** Well, first they played a movie with a  
19 blind person, to show the miracle of the cars.

20 **THE COURT:** Well, that one was just promotional  
21 material. That wasn't a movie.

22 **MS. DUNN:** I agree. At least that's real. This --  
23 *Wall Street* is just a work of fiction.

24 There's no evidence that Mr. Kalanick clicked on the link,  
25 that he saw the speech, that he was so inspired as to give the

1 speech. All there is is a text from Mr. Levandowski which, by  
2 the way, has an emoticon. It does not actually say "wink,  
3 wink" as Mr. Verhoeven has now twice represented to the Court.

4 And so the purpose of this is the same purpose that courts  
5 have previously rejected, which is when you want to play songs  
6 and movies designed to evoke emotional responses -- which this  
7 one apparently did, having won Mr. Douglas the Best Actor  
8 award -- that is the purpose here.

9 And Mr. Verhoeven knows it. It's very apparent. And he's  
10 fighting very hard to be able to do that. And we object.

11 **MR. VERHOEVEN:** I can respond, Your Honor. As Your  
12 Honor noted yesterday, the theory of this case is that  
13 Mr. Levandowski and Mr. Kalanick were in it together, and they  
14 were planning to cheat. And this goes right to it. This is  
15 part of the case, and this is probative to show that, in fact,  
16 that was the case.

17 I don't know what -- why it -- what it is, is a link that  
18 was sent with a text. The text is now undisputedly read. And  
19 I should be able to show it, just like I'd be able to show  
20 someone a document they admit they got, that had an attachment,  
21 and ask him, "Did you read the attachment?" And I get to show  
22 the attachment.

23 **THE COURT:** Well, I'm not sure about that.

24 **MS. DUNN:** Also, if the person had not read the  
25 attachment, it probably would not be shown to the jury because

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1 there would be no foundation for it. Here there is no  
2 foundation. There's no evidence, even if the text was read,  
3 that the link was clicked on. Mr. Kalanick did not respond to  
4 the text.

5 **MR. VERHOEVEN:** May I say one more thing before you  
6 rule?

7 **THE COURT:** Yes.

8 **MR. VERHOEVEN:** We can't ask -- Mr. Levandowski  
9 clearly found this, read it, or saw it and forwarded it. We  
10 can't ask him about it because he's taking the Fifth.

11 So we should, in fairness, be able to ask -- say, "Did you  
12 receive this?" If he denies it -- "Did you read it?" If he  
13 denies it, we know that's not true. If he -- if he says, "I  
14 don't know," so be it.

15 But we should be able to show him the video and say, "Did  
16 you open this? Did you read this? What was your reaction to  
17 this?"

18 **THE COURT:** All right. Here's the answer: I'm not  
19 going to make a ruling on the video yet. What I think you  
20 should do, and you have the Court's blessings, is to say to  
21 Mr. Kalanick the following:

22 "Mr. Kalanick, do you see this text message here? Who is  
23 that from?"

24 He'll presumably say Anthony.

25 "Read it to the jury." Then he reads it out loud.

1           And then -- remind me what the thing -- what it actually  
2 says.

3           **MR. VERHOEVEN:** It's a link to a YouTube video.

4           **THE COURT:** Yeah, but does it --

5           **MR. VERHOEVEN:** It doesn't identify the substance,  
6 so --

7           **MS. DUNN:** Maybe we should put up the exhibit so that  
8 Your Honor can actually see it.

9           **MR. VERHOEVEN:** Counsel.

10          **MS. DUNN:** I apologize.

11          **THE COURT:** Well, look. You can go right up to the  
12 moment of showing this video. No. Look. It goes -- I'm  
13 allowing you to do all of it.

14          Ms. Dunn, you lose on this.

15          And the reason is that even if he didn't look at it,  
16 Levandowski did. And Levandowski is the guy who allegedly  
17 stole all the trade secrets and is -- so you have my  
18 blessings --

19          **MR. VERHOEVEN:** Thank you, Your Honor.

20          **THE COURT:** -- to show the video to -- now, I'm not  
21 saying this is a good use of your time. Maybe it is. I don't  
22 know. But that's coming out of your time.

23          **MR. VERHOEVEN:** Yes, Your Honor.

24          **THE COURT:** All right. Ms. Dunn, I just -- you're  
25 doing a great job for your client, but your client was doing

1 these things. This is not like he's making it up. It's been  
2 black -- and then he deletes it and destroys the evidence.

3 All right. That's the ruling. You can go for it.

4 Let's bring the jury in and get started.

5 Is the witness out there in the hall? One of you get --  
6 somebody bring in the witness so we can get started.

7 Angie, please bring in the jury.

8 Mr. Kalanick, you can come on up here and resume the  
9 stand, please. Thank you for being here on time.

10 **TRAVIS KALANICK**,

11 called as a witness for the Plaintiff, having been previously  
12 duly sworn, testified as follows:

13 **THE CLERK:** All rise for the jury.

14 (Jury enters at 7:55 a.m.)

15 **THE COURT:** Thank you. Be seated.

16 All right. So even before 8 o'clock. Here's this  
17 outstanding jury here on time, ready to do your country's work.  
18 Thank you for that.

19 Yesterday when we broke, Mr. Kalanick was on the stand on  
20 direct examination by Mr. Verhoeven. And he can now resume the  
21 examination.

22 Please, go ahead.

23 **MR. VERHOEVEN:** Thank you, Your Honor.

24 Good morning.

1                           **DIRECT EXAMINATION (RESUMED)**

2                           **BY MR. VERHOEVEN:**

3                           **Q.** Good morning, Mr. Kalanick.

4                           **A.** Good morning.

5                           **Q.** Let's pick up right where we left off and look at, in your  
6 binder, Exhibit 170 again.

7                           **A.** Yep.

8                           **MR. VERHOEVEN:** This is in evidence, Your Honor.

9                           (Document displayed.)

10                          **THE COURT:** Fine.

11                          **MR. VERHOEVEN:** And can we go to page 11. And do we  
12 have all the screens on? There we go.

13                          **BY MR. VERHOEVEN:**

14                          **Q.** And, in particular, I'd like you to look at the part of  
15 the page that has the January 21 meeting. I put it on the  
16 screen to make it easier to read.

17                          Do you see that?

18                          **A.** Yeah, I do.

19                          **Q.** And it says, "21 January meeting, TK." That's you?

20                          **A.** That's correct.

21                          **Q.** And then it lists the other people, Emil, Cam, Bam. It  
22 goes on.

23                          Do you see that?

24                          **A.** Yes, I do.

25                          **Q.** And this is a meeting that you attended January 21, 2016;

1 correct?

2 **A.** Yeah, I assume that I attended a meeting on that time.

3 These aren't my notes, though.

4 **Q.** And this concerns the NewCo transaction; right?

5 **A.** It looks like it.

6 **Q.** And it says "TK's advice." That's you again; right?

7 **A.** Yeah.

8 **Q.** "TK's advice on legal. Tell them we're going to do it.

9 Ask how to minimize the risk, minimize the pain."

10 You said that, didn't you, sir?

11 **A.** I don't remember saying it.

12 **Q.** You deny saying it?

13 **A.** No.

14 **Q.** You agree it's possible you said it; right?

15 **A.** Yeah.

16 **Q.** You told them, and you wanted your management to do the  
17 deal, to tell Legal "we're going to do the deal," and then ask  
18 them to figure out how to minimize the pain and the risk.

19 Isn't that true, sir?

20 **A.** At some point, I definitely wanted to do the deal.

21 **Q.** And the risk you wanted to minimize was that Uber would be  
22 sued by Google or Waymo; right?

23 **A.** I think there's lots of risks in a deal. That's certainly  
24 one of them.

25 **Q.** So one of the risks was that you would be sued by Google

1 or Waymo; right?

2 **A.** Yes.

3 **Q.** And you knew that at the time; right?

4 **A.** Yes.

5 **Q.** Direct your attention in your binder to TX-273.

6 Are you there?

7 **A.** Yeah.

8 **Q.** This is an email from John Bares, dated January 25th,  
9 2016, in which you are cc'd; correct?

10 **A.** Yes.

11 **MR. VERHOEVEN:** Your Honor, I move TX-273 into  
12 evidence.

13 **MS. DUNN:** No objection.

14 **THE COURT:** Thank you. In evidence.

15 (Trial Exhibit 273 received in evidence.)

16 **MR. VERHOEVEN:** Can you publish it?

17 (Document displayed.)

18 **MR. VERHOEVEN:** And, Mr. Fisher, can you pull up a  
19 callout on this for ease.

20 **BY MR. VERHOEVEN:**

21 **Q.** You see in the box I've pulled out, Mr. Kalanick, it's an  
22 email from John Bares, January 25. Do you see that?

23 **A.** I do.

24 **Q.** And you're cc'd; right?

25 **A.** That's correct.

1   **Q.** And in this email, Mr. Bares is talking generally about  
2 value of the deal; right?

3   **A.** I'm trying to find that in here.

4   **Q.** "NewCo equity calculator." Do you see that in the subject  
5 line?

6   **A.** I do.

7   **Q.** So, generally, this discussion is about how much to pay;  
8 right?

9   **A.** I have no idea. I'd have to review the email.

10   **Q.** Okay. You don't deny you got this email, sir?

11   **A.** No, I don't.

12   **Q.** And then you see in paragraph 1, Mr. Bares says, "Now, of  
13 course, the X factor is that with NewCo we get a team that  
14 knows each other." And then he says "has IP in their heads."

15         Do you see that?

16   **A.** I do.

17   **Q.** And IP again, that refers to intellectual property?

18   **A.** I would assume so.

19   **Q.** And Mr. Bares is telling you in January that the X factor  
20 of the NewCo deal is that the team, quote, has IP, intellectual  
21 property, in their heads; right?

22   **A.** It appears to be so, yes.

23   **Q.** You don't deny getting this, do you?

24   **A.** I do not.

25   **Q.** You don't deny reading this, do you?

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1     **A.**    No. I don't remember reading it, but it's very possible I  
2 did.

3     **Q.**    And intellectual property includes trade secrets, doesn't  
4 it, sir?

5     **A.**    Yes.

6     **Q.**    Let's go to another exhibit in your binder, sir.

7     **A.**    Okay.

8     **Q.**    TX-277.

9                 Do you see this is an email from Cameron Poetscher, dated  
10 January 28, to yourself?

11    **A.**    Yeah, I see it.

12                 **MR. VERHOEVEN:** Your Honor, I move to admit TX-277.

13                 **MS. DUNN:** No objection.

14                 **THE COURT:** Received.

15                 (Trial Exhibit 277 received in evidence.)

16                 **MR. VERHOEVEN:** Publish it. Mr. Fisher, can you pull  
17 it out.

18                 (Document displayed.)

19                 **BY MR. VERHOEVEN:**

20    **Q.**    So, for the jury to see, I'll repeat, you see it's from  
21 Mr. Poetscher, at the top, dated January 28, 2016.

22                 Do you know when Mr. Levandowski quit at Google?

23    **A.**    I don't know the exact date, but I'm assuming it's in  
24 January.

25    **Q.**    Okay. Right around this time; right?

1     **A.** Again, I know sometime in January.

2     **Q.** And then Mr. Poetzscher says to you, "TK, did you tell  
3 Anthony that you would indemnify them if they get sued by G as  
4 part of or after the deal? They're under that impression."

5                 Do you see that, sir?

6     **A.** I do.

7     **Q.** And G is Google?

8     **A.** I would assume so, yes. I think so.

9     **Q.** And Anthony is Anthony Levandowski?

10    **A.** Correct.

11    **Q.** And Mr. Poetzscher is asking you -- because he doesn't  
12 know, even though he's running the deal -- did you tell Anthony  
13 that you would indemnify them if they got sued? Isn't that  
14 what he's saying here?

15    **A.** I think that's what he's saying, yes.

16    **Q.** And did you?

17    **A.** I don't believe I did. I think he asked for indemnity,  
18 and we ultimately agreed that we should.

19    **Q.** Then why is Mr. Poetzscher asking you if you did it?

20    **A.** I don't know. We ultimately indemnified him.

21    **Q.** Well, you told Mr. Levandowski, sir, didn't you, that  
22 Listen, if Google sues you because of this deal we want you to  
23 do, we'll indemnify you; right?

24    **A.** We ultimately did, yes.

25    **Q.** It's your testimony, sir, that you don't remember

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1 discussing indemnification at all as part of this NewCo deal,  
2 isn't it?

3 **A.** I don't remember specific conversations, but I generally  
4 understood that he wanted to be indemnified and that we did  
5 indemnify him. Once we generally agreed to do that, I sent it  
6 to the deal and legal teams to sort of work through those  
7 details.

8 **MR. VERHOEVEN:** Can we play, Mr. Fisher, from  
9 Mr. Kalanick's July 27, 2017, deposition, page 235, lines 12  
10 through 14.

11 (Video played.)

12 **BY MR. VERHOEVEN:**

13 **Q.** You don't recall ever speaking with Mr. Cameron -- excuse  
14 me -- with Cameron Poetzscher about indemnifying  
15 Mr. Levandowski if he got sued by Google as part of the deal;  
16 right?

17 **A.** I don't remember a specific conversation, but that doesn't  
18 mean that it didn't happen.

19 **MR. VERHOEVEN:** Let's play from your deposition,  
20 July 27, 2017, page 234, 8 through 13.

21 (Video played.)

22 **BY MR. VERHOEVEN:**

23 **Q.** Now, let's go to March -- the March time frame of 2016.

24 **A.** Okay.

25 **Q.** During the March time period, you and Mr. Levandowski were

1 personally texting back and forth with each other, weren't you?

2 **A.** I assume so, yeah.

3 **Q.** You and Mr. Levandowski over this time period exchanged  
4 literally hundreds of text messages, didn't you?

5 **A.** I haven't counted, but it sounds -- sounds reasonable.

6 **Q.** And isn't it true, sir, that during this time your phone  
7 that you used to text was configured to a setting that would  
8 autodelete all of your text messages every 30 days?

9 **A.** Yes. I had a 30-day autodelete setting, correct.

10 **Q.** After 30 days, the texts you sent would disappear?

11 **A.** That's correct.

12 **Q.** And you also communicated with Mr. Levandowski during this  
13 time period using an application called Telegram; right?

14 **A.** That's correct.

15 **Q.** And Telegram is a chat application where the messages only  
16 last for a certain amount of time and then they disappear;  
17 right?

18 **A.** That's correct.

19 **Q.** And you used the Telegram application to communicate with  
20 Mr. Levandowski regarding ATG business; right?

21 **A.** Yes. I'd say that was probably later in 2016 but probably  
22 not during the deal.

23 **Q.** Turn in your binder to TX-10275, please.

24 **A.** 10275?

25 **Q.** Yes, sir.

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1     **A.**    Okay. Hold on.

2               There we go. Okay.

3     **Q.**    If you flip through this, you see that these are a series  
4       of text messages between yourself and Mr. Levandowski; correct?

5     **A.**    Correct.

6               **MR. VERHOEVEN:** Your Honor, I move TX-10275 into  
7       evidence.

8               **MS. DUNN:** No objection.

9               **THE COURT:** 10275 received.

10              (Trial Exhibit 10275 received in evidence.)

11              **BY MR. VERHOEVEN:**

12     **Q.**    Direct your attention to the second page of these texts.

13               **MR. VERHOEVEN:** And for the jury's benefit, these  
14       black boxes are personal telephone numbers that we didn't want  
15       the public to have. So that's what those are there.

16              **BY MR. VERHOEVEN:**

17     **Q.**    This is a text from yourself to Mr. Levandowski; correct?

18     **A.**    Appears to be so.

19     **Q.**    You sent it on March 1st, 2016; right?

20     **A.**    Looks like it, yes.

21     **Q.**    And you texted to him, quote, burn the village.

22               Do you see that?

23     **A.**    I do, yes.

24     **Q.**    What did you mean by "burn the village"?

25     **A.**    I don't know. I'm not sure what it's referring to.

1   **Q.** Well, you wrote it. What did you mean?

2   **A.** It was two years ago, and it was a one-line text. I just  
3 don't remember.

4   **Q.** You don't have any idea what it means?

5   **A.** No.

6   **Q.** Well, Mr. Levandowski knew what it meant, though, didn't  
7 he?

8   **A.** I don't know.

9   **Q.** Well, turn to the next page.

10   **A.** Okay.

11   **Q.** Do you see he texted back to you on March 1st, 2016, same  
12 day?

13   **A.** Okay.

14   **Q.** Right?

15   **A.** Yep.

16   **Q.** And he said, "Yup." Sounds like he knew what you meant?

17   **A.** It does, yeah.

18   **Q.** You have no idea what you're talking about?

19   **A.** No idea.

20   **Q.** Direct your attention to page 20 of your texts. Do you  
21 see this is a text from Mr. Levandowski to yourself?

22   **A.** Okay.

23   **Q.** Do you agree?

24   **A.** Yes.

25   **Q.** And this is also dated March 1st, 2016; correct?

1       **A.**    Correct.

2       **Q.**    And Mr. Levandowski tells you, quote, I just see this as a  
3 race and we need to win, second place is first loser.

4                  Do you see that, sir?

5       **A.**    I do.

6       **Q.**    And you agree with that, don't you?

7       **A.**    Well, I first heard it from my high school football coach,  
8 but yes.

9       **Q.**    And you're talking about the race to develop driverless  
10 car technology; correct?

11      **A.**    Yeah. That's correct.

12      **Q.**    And you agree with Mr. Levandowski that the two of you  
13 thought that second place was first loser in this technology;  
14 right?

15      **A.**    That's correct.

16      **Q.**    And you and he were determined to make sure you weren't  
17 the first loser; right?

18      **A.**    Correct.

19      **Q.**    Let's just, for the record, look at page 22. This is your  
20 text back to him in response; correct?

21      **A.**    Looks like it, yeah.

22                  **MS. DUNN:** Objection, Your Honor. There's a text in  
23 between those two.

24                  **THE WITNESS:** Oh.

25                  **THE COURT:** Okay. Go back over the one --

1           **MR. VERHOEVEN:** Thank you, Your Honor.

2           **BY MR. VERHOEVEN:**

3           **Q.** Take a look at the time stamp where you say "agreed."

4 It's March 1st, 2016.

5           **A.** Okay. So that's 22 or 21?

6           **Q.** That is 22. The one on the screen here, sir.

7           **A.** Sorry. I was looking at the stamp.

8           **Q.** That's where you say "agreed"?

9           **A.** Yeah. Yes.

10          **Q.** And you see the time stamp?

11          **A.** I do.

12          **Q.** And it says March 1st, 2016?

13          **A.** Yes.

14          **Q.** Explain to the jury what those numbers next to it mean.

15          **A.** I'm not sure what you mean. What numbers? What are we talking about?

17          **Q.** 9:03:15.

18          **A.** I'm going to guess that's the time stamp?

19          **Q.** Right. So what does it say?

20          **A.** "9:03 a.m. UTC+0."

21          **Q.** And 15 seconds?

22          **A.** Oh, I'm sorry. And 15 seconds.

23                 But it's a UTC time, so maybe that's eight hours forward.

24                 I don't know.

25          **Q.** Let's look at the text on page 20.

1   **A.**   Page 20. Okay. Yep.

2   **Q.**   This is the text from Mr. Levandowski, where he says, "I  
3   see this as a race and we need to win."

4   **A.**   Yeah.

5   **Q.**   "Second place is first loser"; right?

6   **A.**   Yeah.

7   **Q.**   What's the time stamp on there?

8   **A.**   It's 9:02:59.

9   **Q.**   So 9:02 and 59 seconds?

10   **A.**   Yeah.

11   **Q.**   Go back to 22.

12   **A.**   Okay.

13   **Q.**   9:03 and 15 seconds. Do you see that?

14   **A.**   Yeah.

15   **Q.**   So you responded in 16 seconds?

16   **A.**   Appears to be so.

17   **Q.**   You're responding to that text, aren't you, sir?

18   **A.**   Yeah. Probably.

19   **Q.**   Let's go to -- let's go in your binder to Exhibit TX-5460.

20   **A.**   5460.

21   **Q.**   TX-5460.

22   **A.**   Apologies.

23   **Q.**   No problem.

24   **A.**   Okay. There we go.

25   **Q.**   And this is also a text from Mr. Levandowski to yourself;

1 correct?

2 **A.** Yes.

3 **MR. VERHOEVEN:** Your Honor, I move TX-5460 into  
4 evidence.

5 **MS. DUNN:** No objection.

6 **THE COURT:** Thank you. Received.

7 (Trial Exhibit 5460 received in evidence.)

8 **MR. VERHOEVEN:** Put it on the screen.

9 (Document displayed.)

10 **BY MR. VERHOEVEN:**

11 **Q.** So, again, we see this is from Mr. Levandowski to  
12 yourself.

13 **A.** Yeah.

14 **Q.** Dated the same day, March 1st, 2016.

15 **A.** Yep.

16 **Q.** And Mr. Levandowski says to you, quote, We need to think  
17 through the strategy to take all the shortcuts we can find,  
18 close quote.

19 Do you see that?

20 **A.** Yes.

21 **Q.** And the strategy he's talking about is the development of  
22 LiDAR technology, isn't it?

23 **A.** At the -- I don't think so, but I am not sure exactly.  
24 Probably not.

25 **Q.** So he's talking about something totally unrelated to the

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1 deal?

2 **A.** Right. My guess is it's autonomy generally.

3 **Q.** So you would agree at least that the strategy for which he  
4 wanted to find all the shortcuts he could find with you was  
5 autonomy, was driverless car technology; right?

6 **A.** Yeah. Probably.

7 **Q.** All right. Let's go to another exhibit. This is TX-8009  
8 in your binder.

9 Are you there?

10 **A.** Yeah.

11 **Q.** This is a text from -- another text from Mr. Levandowski  
12 to yourself, dated March 17, 2016; correct?

13 **A.** Yes.

14 **MR. VERHOEVEN:** Your Honor, I move TX-8009 into  
15 evidence.

16 **MS. DUNN:** No objection.

17 **THE COURT:** Received.

18 (Trial Exhibit 8009 received in evidence.)

19 (Document displayed.)

20 **BY MR. VERHOEVEN:**

21 **Q.** And we can see here, now that it's published, that it's a  
22 text from Mr. Levandowski to Mr. Kalanick, dated March 17. And  
23 Mr. Levandowski says, quote, Absolutely, just itching to roll  
24 out this tech and win.

25 Do you see that?

1     **A.** I do.

2     **Q.** And the technology he's talking about was autonomous  
3 vehicle technology; correct?

4     **A.** Yes.

5     **Q.** Mr. Levandowski told you he has the tech and he's itching  
6 to roll it out; right?

7     **A.** He didn't say that he has the tech; he just said he's  
8 itching to roll it out.

9     **Q.** Let's play it from your deposition dated October 2, 2017,  
10 from page 456/25 through 457/6.

11                         (Video played.)

12                         **THE COURT:** I'm sorry. It went by too fast. Can you  
13 replay that again, that clip.

14                         **BY MR. VERHOEVEN:**

15     **Q.** Mr. Levandowski also says in the text that he wants to  
16 win; right?

17     **A.** That's correct.

18     **Q.** And like Mr. Levandowski, you wanted to win too?

19     **A.** That's correct.

20     **Q.** Please turn in your binder to Exhibit TX-10312.

21     **A.** Okay.

22     **Q.** Are you there?

23     **A.** Yeah.

24     **Q.** This is a text that Mr. Levandowski sent to you on  
25 March 21, 2016; correct?

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1     **A.**   That appears to be the case, yeah.

2                 **MR. VERHOEVEN:** Your Honor, I move TX-10312 into  
3 evidence.

4                 **MS. DUNN:** Your Honor, we'll just state our objection  
5 for the record.

6                 **THE COURT:** I'm sorry. Give me the number again.

7                 **MR. VERHOEVEN:** Certainly. It's TX-10312, at page --

8                 **THE COURT:** All right. Received in evidence.

9 Objection overruled.

10                 (Trial Exhibit 10312 received in evidence.)

11                 **MR. VERHOEVEN:** Publish it, please.

12                 (Document displayed.)

13 **BY MR. VERHOEVEN:**

14     **Q.**   And here we can see that this is the text from  
15 Mr. Levandowski to you; correct?

16     **A.**   Yes.

17     **Q.**   And it's dated -- I misspoke. It's dated March 19, 2016.  
18 Do you see that?

19     **A.**   Oh, sorry. Yeah, I do.

20     **Q.**   And Mr. Levandowski says, quote, Here's the speech you  
21 need to give. And that's a little winky sign; right?

22     **A.**   It's a winky face, yes.

23     **Q.**   And you read this text; right?

24     **A.**   I assume so.

25     **Q.**   And next to the winky face is a link to a YouTube video.

1 Do you see that?

2 **A.** Yeah, I do.

3 **MR. VERHOEVEN:** Let's play that YouTube video.

4 (Video played.)

5 **BY MR. VERHOEVEN:**

6 **Q.** You clicked on that link, didn't you, sir?

7 **A.** I don't know.

8 **Q.** You wouldn't remember that if you clicked on that?

9 **A.** I would -- I think I would. There's a winky face right  
10 there.

11 **Q.** And I saw that winky face.

12 **A.** Yeah.

13 **Q.** That's a famous speech, isn't it, sir?

14 **A.** It's a movie; it's fake.

15 **Q.** Yeah. It's called *Wall Street*; right?

16 **A.** I think so, yeah.

17 **Q.** And it's the "Greed is Good" speech; right?

18 **A.** I don't know the name of it, but I've seen the video  
19 before -- the movie, I guess.

20 **Q.** Now, during this time period in March of 2016,  
21 Mr. Levandowski was also texting you directly about something  
22 called the Stroz due diligence investigation; right?

23 **A.** That's possible.

24 **Q.** You're aware generally that, as part of the deal, the  
25 lawyers set up a -- hired a company called Stroz to do some due

1 diligence; right?

2 **A.** That's correct.

3 **Q.** And as part of that, they -- the company Stroz -- the  
4 entity Stroz was inquiring into Mr. Levandowski about what he  
5 had on his computers and asking questions of him; right?

6 **A.** Yeah, I think that's -- that was part of the process.

7 **Q.** Now, let's go to TX-376 in your binder.

8                   **MR. VERHOEVEN:** Let's move it into evidence, TX-376.

9                   Can we publish it?

10                  **THE COURT:** Please go ahead. In evidence.

11                  (Trial Exhibit 376 received in evidence.)

12                  **BY MR. VERHOEVEN:**

13 **Q.** Are you there, Mr. Kalanick?

14 **A.** Yes, I am.

15 **Q.** Okay. So this is another text from Mr. Levandowski to  
16 yourself. This one is dated March 21st, 2016. Do you see it?

17 **A.** I do.

18 **Q.** And he's responding to you. He says, quote, Yes, we were  
19 slow on two items. They were the diligence questionnaires  
20 (dumb questions like how many email accounts I have), and  
21 product design questionnaires for IP check.

22                  Do you see that?

23 **A.** I do.

24 **Q.** What question were you asking him?

25 **A.** I don't remember. I don't remember.

1     **Q.**    You were asking him about the due diligence; right?

2     **A.**    It's possible.

3     **Q.**    And he's telling you that they just had dumb questions.

4     Do you see that?

5     **A.**    I think that -- yeah, that's one part of what he's telling  
6     me, yes.

7     **Q.**    You didn't text him back and say, "Those aren't dumb  
8     questions; you need to be careful," did you?

9     **A.**    I don't know how I responded.

10    **Q.**    You don't remember, do you?

11    **A.**    That's correct.

12    **Q.**    Let's turn to another exhibit, please, in your binder.

13    TX-8011.

14               **MR. VERHOEVEN:** Any objection to 8011?

15               **MS. DUNN:** No objection.

16               **MR. VERHOEVEN:** Put it up, Your Honor?

17               **THE COURT:** Yes.

18               (Trial Exhibit 8011 received in evidence.)

19               (Document displayed.)

20               **BY MR. VERHOEVEN:**

21    **Q.**    Here's another text from Mr. Levandowski to yourself. Do  
22    you see that?

23    **A.**    Yep.

24    **Q.**    And this one is dated March 21st, 2016, same day; right?

25    **A.**    Yep.

1       **Q.** And in this one, Mr. Levandowski says, quote, I am  
2 squeezing our attorneys like toothpaste too. Thanks for  
3 pushing. It really is helping.

4                  Do you see that?

5       **A.** I do.

6       **Q.** Do you remember squeezing the attorneys like toothpaste?

7       **A.** No, not exactly.

8       **Q.** You don't dispute that you read this, do you?

9       **A.** No.

10      **Q.** Let's look at another exhibit. This is already in  
11 evidence.

12                  **MR. VERHOEVEN:** That was in evidence; right, Your  
13 Honor?

14                  **THE COURT:** 8011 is in evidence.

15                  **MR. VERHOEVEN:** Yes.

16                  **BY MR. VERHOEVEN:**

17      **Q.** Let's go to TX-0378.

18                  **MR. VERHOEVEN:** Is there any objection to this one?

19                  **MS. DUNN:** No objection.

20                  **THE WITNESS:** Say the number one more time.

21                  **MR. VERHOEVEN:** Sure. 0378.

22                  **THE WITNESS:** 0378.

23                  **THE COURT:** Any objection?

24                  **MR. VERHOEVEN:** There was no objection.

25                  **THE COURT:** All right. Received in evidence.

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1 (Trial Exhibit 0378 received in evidence.)

2 **THE WITNESS:** 0378. I don't know if that's here.

3 Hold on. I don't have -- I see --

4 **THE COURT:** Counsel, go up there to the witness  
5 bench --

6 **THE WITNESS:** I gotcha.

7 **THE COURT:** -- and help him find the exhibit.

8 **THE WITNESS:** I got it.

9 **THE COURT:** He's found it. All right.

10 **THE WITNESS:** Yeah.

11 **MR. VERHOEVEN:** Put it on the screen. Can we pull out  
12 the highlighting there.

13 (Document displayed.)

14 **BY MR. VERHOEVEN:**

15 **Q.** You see this is an email from Mr. Levandowski, and the  
16 subject matter says "Whiteboard translation TK points."

17 **A.** Yes, I see that.

18 **MR. VERHOEVEN:** Before I go into this -- I apologize I  
19 didn't raise this earlier, Your Honor -- there's some profanity  
20 in this. I don't know if there's an issue with that --

21 **THE COURT:** We've seen --

22 **MR. VERHOEVEN:** -- what your policy is with that.

23 **THE COURT:** I don't know what -- I can't read it. The  
24 print's too small. It's part of the evidence.

25 **MR. VERHOEVEN:** Okay.

1           **THE COURT:** It's in evidence. Proceed.

2           **BY MR. VERHOEVEN:**

3           **Q.** All right. Direct your attention to the attachment. So  
4 the TK refers to you; right?

5           Before we do that, let's just look at the attachment,  
6 Mr. Fisher, the whole thing.

7           There's a whiteboard right there; right?

8           **A.** Correct.

9           **Q.** And it's hard to read. I can make it bigger if you want,  
10 but that's your handwriting, isn't it?

11          **A.** Yes, it is.

12          **Q.** All right.

13           **MR. VERHOEVEN:** Now, let's go to the pullout.

14           **BY MR. VERHOEVEN:**

15          **Q.** And you wrote -- this is also a meeting with  
16 Mr. Levandowski; right? Remember this?

17          **A.** I would assume so.

18          **Q.** Yeah. And you wrote here, "Pittsburg ++ - I know some  
19 shit."

20          **A.** Yeah.

21          **Q.** Do you see that?

22          **A.** I do.

23          **Q.** Mr. Levandowski had told you that "I know some shit"; is  
24 that right?

25          **A.** I don't know. I'm guessing. I mean, maybe there's

1 something there that -- I'm not sure what that means exactly.

2 Q. You wrote it down.

3 A. It was two years ago.

4 Q. You were at the meeting?

5 A. That -- that's true.

6 Q. Do you deny that this is Mr. Levandowski saying to you "I  
7 know some shit"?

8 A. No. I mean, it could be that -- it could be that -- we  
9 were trying to figure out how Pittsburgh team and San Francisco  
10 team could work together well. Them sort of understanding that  
11 each team brought something to the party is how you get people  
12 to work together.

13 And Pittsburgh was the only place we were doing autonomy,  
14 and adding a West Coast presence was like unsettling for folks  
15 who thought everything was going to be done at their -- at  
16 their facility.

17 Q. So Levandowski saying, hey, I know some shit that's going  
18 to help, isn't he talking about the fact that he knows all  
19 about how to make lasers?

20 A. No, that's not it. You see this like "Ying Yang  
21 complementary" --

22 Q. Thank you. Thank you, sir.

23 A. Sorry.

24 Q. You deny that that's what he's saying?

25 A. I -- state the question again.

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1     **Q.**    Isn't it true that what he means by, at this meeting, when  
2   he said, "I know some shit" --

3     **A.**    No.

4     **Q.**    -- is he's talking about the laser technology that he  
5   knows?

6     **A.**    I don't --

7     **Q.**    Yes or no, sir?

8     **A.**    I don't believe so.

9     **Q.**    Let's go to -- in your binder to TX-0911.

10           **MR. VERHOEVEN:** Any objection?

11           **MS. DUNN:** No.

12           **THE COURT:** In evidence.

13           (Trial Exhibit 911 received in evidence.)

14           **MR. VERHOEVEN:** Can we put it up, please.

15           (Document displayed.)

16           **BY MR. VERHOEVEN:**

17     **Q.**    These are the minutes of a special meeting of the board of  
18   directors at Uber Technologies, dated April 11, 2016; correct?

19     **A.**    Correct.

20     **Q.**    And this is the board meeting where the board considered  
21   and approved the acquisition of Ottomotto; correct?

22     **A.**    That's correct.

23     **Q.**    And you see in the minutes it says, quote, Mr. Kalanick  
24   and Mr. Poetzscher led the discussion regarding a potential  
25   acquisition and described key aspects of the proposed

1 transaction.

2 Do you see that, sir?

3 **A.** I do.

4 **Q.** You deny those minutes are accurate?

5 **A.** No. They seem accurate. I did the first part of the  
6 meeting. He did the second part.

7 **Q.** Please turn in your binder to TX-0910.

8 **A.** 0910.

9 **MR. VERHOEVEN:** Any objection?

10 **MS. DUNN:** No objection.

11 **THE COURT:** Received.

12 (Trial Exhibit 0910 received in evidence.)

13 **MR. VERHOEVEN:** Can you put it on the screen, please.

14 (Document displayed.)

15 **BY MR. VERHOEVEN:**

16 **Q.** Do you see this says "Project Zing Review," and it's also  
17 dated April 11, 2016?

18 **A.** That's correct.

19 **Q.** Zing refers to the Ottomotto transaction?

20 **A.** Yes, I think so.

21 **Q.** And you and Mr. Cameron -- excuse me, Mr. Poetzscher  
22 presented this slide deck to the board as part of the  
23 presentation to the board in connection with approving the  
24 transaction; correct?

25 **A.** So I did a preamble to this presentation, and then Cameron

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1 presented the presentation itself.

2 **Q.** Are you saying you weren't involved in this presentation,  
3 sir?

4 **A.** I said that I did the preamble to the presentation. I did  
5 not present the slides.

6 **Q.** You didn't say anything at this meeting except a preamble?

7 **A.** I may have said something during the meeting. I just  
8 didn't present the slides.

9 **Q.** Let's go to page 2 of these slides.

10 And you see it says "Deal Overview," and on the left it  
11 says "Rationale"?

12 **MR. VERHOEVEN:** Can we pull that out a little bit  
13 bigger.

14 **BY MR. VERHOEVEN:**

15 **Q.** I have it there highlighted on the screen. You see it  
16 says "Rationale"?

17 **A.** Yeah.

18 **Q.** And this is the presentation to the board; right?

19 **A.** That's correct.

20 **Q.** So the rationale for the deal, that's what that's  
21 referring to?

22 **A.** Yeah.

23 **Q.** And it says, quote, Lasers are critical to Uber's  
24 autonomous vehicle development, and Ottomotto is expected to  
25 de-risk our current laser approach, closed quote.

1           Do you see that?

2   **A.**   I do.

3   **Q.**   And that was presented as the rationale for the deal;  
4 right?

5   **A.**   One of the rationale, yes.

6   **Q.**   You see it also says -- there's another rationale that it  
7 would accelerate current timelines?

8   **A.**   That's correct.

9   **Q.**   So it would help you win this race; right?

10   **A.**   Yes.

11   **Q.**   Now, if you look at the bottom portion, it says "Terms."  
12 Do you see that?

13   **A.**   Yes, I do.

14   **Q.**   And what's the number there, 592 million?

15   **A.**   That's correct.

16   **Q.**   And that would be paid to Mr. Levandowski and Ottomotto  
17 if -- it says "tied to the achievement of technical  
18 milestones."

19           Do you see that?

20   **A.**   I -- I do.

21   **Q.**   And so they wouldn't get paid unless they achieved these  
22 technical milestones; right?

23   **A.**   If they get those mile -- if they hit the technical  
24 milestones, then they will get paid that 20 percent. If they  
25 don't hit the technical milestones, ultimately, they could

1 still get the entire payment.

2 Q. Yeah, you said that yesterday.

3 A. Yeah.

4 Q. Let's say that they fail and they can't develop the  
5 technology.

6 A. Yeah.

7 Q. How are they going to hit the other milestones?

8 A. Well, we were already buying lasers from a bunch of  
9 vendors. And so if those vendors could scale their production  
10 of lasers, then our own laser wasn't necessary but we could  
11 still build all the software to get us to autonomous vehicles.

12 Q. So let me see if I understand this.

13 The whole rationale for the deal is that they can build  
14 lasers. And you're saying that they would get paid 80 percent  
15 of the 592 million if they failed to deliver the lasers. Is  
16 that what you're saying, sir?

17 A. No, that's not what I'm saying. The whole rationale of  
18 the deal was not that they build lasers. It was a small part  
19 of the deal.

20 Q. It's a small part of the deal.

21 A. That's correct.

22 Q. Okay.

23 A. 20 percent.

24 Q. It also says "Uber will indemnify claims from former  
25 employers (e.g. IP)." Do you see that?

1   **A.** Yes, I do.

2   **Q.** IP, intellectual property; right?

3   **A.** Yes.

4   **Q.** That's IP just like we saw in Mr. Bares' email that  
5 referred to IP in these guys' heads; right? That's IP?

6   **A.** Yes.

7   **Q.** And this is saying if Google sues for this, that we've  
8 promised that we will indemnify Ottomotto; correct?

9   **A.** Not necessarily. It was under certain -- my guess is  
10 under certain conditions.

11   **Q.** Okay. Subject to certain restrictions and limitations;  
12 right?

13   **A.** Yeah. Like I'm -- I'm just guessing there's a number  
14 of --

15   **Q.** We don't want you to guess, sir.

16   **A.** Yeah.

17   **Q.** Okay?

18   **A.** Fair enough.

19   **Q.** All right. But, nonetheless, this says "Uber will  
20 indemnify claims from former employees (e.g. IP)." It says it  
21 right there?

22   **A.** Yes, it does.

23   **Q.** And the board was told that; right?

24   **A.** Yes, it was.

25   **Q.** Direct your attention to page 5 of Exhibit 910.

1           **MR. VERHOEVEN:** And can we pull out the square that  
2 says "Pre-signing Due Diligence."

3           **BY MR. VERHOEVEN:**

4           **Q.** Is that highlighted on the screen for you, sir?

5           **A.** Yes, I see that.

6           **Q.** And here, this is part of the presentation to the board;  
7 correct?

8           **A.** Yes. Well, it's the appendix. I'm not sure if this slide  
9 was presented.

10          **Q.** The board had the slide deck?

11          **A.** I'm not sure. I don't know.

12          **Q.** Okay. You don't know whether the board would have the  
13 slide deck?

14          **A.** Correct.

15          **Q.** Okay. "Third-party forensic expert performed DD." That's  
16 referring to Stroz; right?

17          **A.** Yes.

18          **Q.** And then it says "Uber received report from that  
19 third-party forensic expert."

20           Do you see that, sir?

21          **A.** I do.

22          **Q.** And then it continues, "Based on our review of the facts,  
23 Uber decided to move forward with signing."

24           Do you see that?

25          **A.** Yes, I do.

1     **Q.**    What did you say to the board about the due diligence in  
2 connection with the indemnity?

3     **A.**    I'm not sure I said anything about it.

4     **Q.**    You didn't say anything?

5     **A.**    I don't believe I did.

6     **Q.**    But the board was told on April 11th -- withdrawn.

7               In fact, you never received any report from the forensic  
8 expert, did you?

9     **A.**    Well, I personally did not.

10    **Q.**    And you didn't receive any interim reporting prior to this  
11 April 11th board meeting from Stroz, did you?

12    **A.**    I personally did not.

13    **Q.**    You aren't even aware that there was an expert report,  
14 were you? Excuse me. I withdraw that question.

15               **MR. VERHOEVEN:** Get my tenses right, Your Honor.

16               **BY MR. VERHOEVEN:**

17    **Q.**    At the time, you were not even aware that there was any  
18 report; right?

19    **A.**    That's correct.

20    **Q.**    You never read the Stroz report, did you?

21    **A.**    I wasn't aware that Legal had been working on a Stroz  
22 report.

23    **Q.**    You haven't read the Stroz report, have you?

24    **A.**    That's correct.

25    **Q.**    Ever?

1     **A.**   That's correct.

2     **Q.**   Now, you're the CEO. You could have looked at -- at the  
3 time you're the CEO. You could have looked at anything you  
4 wanted; right?

5     **A.**   Technically, yes.

6     **Q.**   You don't even know if the Stroz report was sent to any  
7 one of your other board members; right?

8     **A.**   I think ultimately it was.

9     **Q.**   At the time?

10    **A.**   At the time, no. I think it was a legal process.

11    **Q.**   The board was told that you had conducted a review of the  
12 facts and decided to move forward with signing, wasn't it, sir?

13    **A.**   It was -- it was told that Uber had conducted a review of  
14 the facts.

15    **Q.**   You told the board that the due diligence had come up  
16 clean, didn't you, sir?

17    **A.**   I did not.

18    **Q.**   Mr. Poetzscher told the board the due diligence had come  
19 up clean, didn't he?

20    **A.**   I don't remember him saying that.

21    **Q.**   Did you tell the board what the results were from the  
22 forensic expert?

23    **A.**   I did not.

24    **Q.**   Did Mr. Poetzscher?

25    **A.**   I don't remember him doing that, no. We believed that the

1 diligence --

2 Q. Thank you, sir.

3 A. Okay.

4 Q. The Stroz investigation was looking at, in part, whether  
5 Mr. Levandowski had committed bad acts; isn't that true?

6 A. I wasn't in the details of the diligence. It was a legal  
7 and deal team process.

8 Q. Do you know that the Stroz investigation was investigating  
9 the subject of bad acts?

10 A. I did not know that, no. They were --

11 Q. Did your -- did any briefing you received prior to  
12 April 11th include anything about bad acts?

13 A. I received briefing from legal, sort of status updates on  
14 the diligence process.

15 Q. Let's play from your deposition dated July 27, 2017, at  
16 page 153, 22 through 24.

17 (Video played.)

18 BY MR. VERHOEVEN:

19 Q. You don't remember seeing any documents referring to bad  
20 acts associated with this transaction; right?

21 A. That's correct.

22 Q. You never read any documents or agreements that talked  
23 about bad acts in connection with this transaction; right?

24 A. That's correct.

25 Q. Turn in your binder, please, to TX-285.

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1                   **MR. VERHOEVEN:** And I'd like to know, is that objected  
2 to?

3                   **MS. DUNN:** No objection.

4                   **MR. VERHOEVEN:** Move TX-285 into evidence.

5                   **THE COURT:** All right. Received.

6 (Trial Exhibit 285 received in evidence.)

7 (Document displayed.)

8                   **MR. VERHOEVEN:** Can we pull up the little text there  
9 so it's easier to read.

10                  **THE WITNESS:** Okay.

11                  **BY MR. VERHOEVEN:**

12                  **Q.** Do you see this? It says "Agreement and Plan of Merger"?

13                  **A.** I do see that.

14                  **Q.** This is the acquisition agreement that the board approved  
15 on April 11th, after your presentation; correct?

16                  **A.** That's correct.

17                  **Q.** Turn to page 51.

18                  **MR. VERHOEVEN:** And can we highlight -- there we go.

19                  **BY MR. VERHOEVEN:**

20                  **Q.** Is that your signature on page 51?

21                  **A.** Yes, it is.

22                  **Q.** So you signed this agreement; correct?

23                  **A.** Yes, I did.

24                  **Q.** Isn't it true, sir, that you didn't even read this  
25 agreement before you signed it?

1      **A.**    That's correct.

2      **Q.**    There was also an indemnification agreement between Uber  
3                and Mr. Levandowski that was entered into on the very same day,  
4                April 11th, 2016. Do you remember that?

5      **A.**    Yes.

6      **Q.**    Turn in your binder to TX-743, please.

7                **MR. VERHOEVEN:** And any objection?

8                **MS. DUNN:** No objection.

9                **THE COURT:** Received.

10               (Trial Exhibit 743 received in evidence.)

11               **MR. VERHOEVEN:** Put it up.

12               (Document displayed.)

13               **MR. VERHOEVEN:** And can we highlight the top or pull  
14               up the top, please, Mr. Fisher. Just the top, please. There  
15               we go.

16               **BY MR. VERHOEVEN:**

17      **Q.**    This is the indemnification agreement; right?

18      **A.**    I believe that to be the case.

19      **Q.**    Now, it's your testimony that you don't even recognize  
20               this indemnification agreement, isn't it?

21      **A.**    I've never seen -- I've never read the indemnification  
22               agreement.

23      **Q.**    Let's play from your deposition dated July 27, 2017, from  
24               page 276/25 through 277/5.

25               (Video played.)

1 BY MR. VERHOEVEN:

2 Q. Direct your attention to page 19. That's your signature,  
3 isn't it, sir?

4 A. Yes, it is.

5 Q. You signed this indemnification agreement; right?

6 A. Yes, I did.

7 Q. But you didn't even bother to read this document before  
8 you signed it, did you, sir?

9 A. No. I signed --

10 Q. Thank you, sir.

11 A. -- hundreds of documents a month.

12 Q. Thank you, sir.

13 A. All right.

14 Q. And it's your testimony that you're not even familiar with  
15 the terms of this indemnification agreement; right?

16 A. That's correct.

17 Q. Under this agreement, Uber agreed to indemnify  
18 Mr. Levandowski for bad acts that he committed prior to  
19 April 11th; isn't that true, sir?

20 A. I am not familiar with the details of the indemnification  
21 agreement, but that is my understanding.

22 MR. VERHOEVEN: Let's go -- let's pull up TX-743.

23 Let's pull out the whereas clause, please, Mr. Fisher.

24 (Document displayed.)

1 **BY MR. VERHOEVEN:**

2 Q. All right. Can you see that on the screen?

3 A. I can.

4 Q. It says, quote, Whereas, the parties agree that any claim  
5 that has arisen out of or resulted from any pre-signing bad  
6 acts committed by or on behalf of any member of the company  
7 group by a diligenced employee" -- Mr. Levandowski was a  
8 diligenced employee; right?

9 A. Correct.

10 Q. -- "and/or committed by any diligenced employee that  
11 reasonably arises or results from any facts," and then it goes  
12 on. It says, "It shall" --

13 **MR. VERHOEVEN:** Can we highlight, Mr. Fisher.

14 **BY MR. VERHOEVEN:**

15 Q. -- "constitute an indemnifiable claim."

16 Do you see that?

17 A. I do.

18 Q. So this is saying that the company will indemnify  
19 Mr. Levandowski if he gets sued for committing bad acts prior  
20 to April 11th; right?

21 **MS. DUNN:** Objection, Your Honor. Foundation.

22 **THE COURT:** Sustained.

23 Since he said he has not read it, you're asking him to  
24 make conclusions about a long document that -- on the fly.

25 You can ask him what his understanding back at the time

1 was.

2           **MR. VERHOEVEN:** Thank you, Your Honor.

3           **THE COURT:** But I have a feeling that this is going to  
4 take up too much time. So please proceed in a different way.

5           **MR. VERHOEVEN:** Thank you, Your Honor.

6           **BY MR. VERHOEVEN:**

7           **Q.** You see here that the bad acts is defined?

8           **A.** Yes, I do.

9           **Q.** And you see it concludes, "misappropriation by an  
10 employee ... of any trade secrets from a former employer." Do  
11 you see that?

12          **A.** Yeah. I think that's -- it's a longer sentence than that,  
13 but, yes, I do see that.

14          **Q.** It says at least that, doesn't it?

15          **A.** It does.

16          **Q.** Now, it's your testimony -- withdrawn.

17           Other than --

18           **MR. VERHOEVEN:** We can put that down, Mr. Fisher.

19           **BY MR. VERHOEVEN:**

20          **Q.** Other than the Ottomotto deal and this specific  
21 indemnification agreement, isn't it true, sir, that you've  
22 never heard of an indemnification agreement that uses the words  
23 "pre-signing bad acts"?

24          **A.** That's correct.

25          **Q.** Let's move on. I'd like to show exhibit -- or please turn

1 in your binder to TX-0682.

2 **MR. VERHOEVEN:** This is in evidence, Your Honor.

3 (Document displayed.)

4 **MR. VERHOEVEN:** And can we pull up --

5 **BY MR. VERHOEVEN:**

6 **Q.** I'll give you a chance to get there.

7 **A.** I'm here.

8 **MR. VERHOEVEN:** Can we pull up the excerpt that I'd  
9 like to show, Mr. Fisher.

10 **BY MR. VERHOEVEN:**

11 **Q.** This is on page 1. And you see the date is April 28th,  
12 2016?

13 **A.** I do see that, yes.

14 **Q.** So the deal was signed April 11th; right?

15 **A.** Yes.

16 **Q.** So this is just a little bit later; right?

17 **A.** Yes.

18 **Q.** And this is Mr. Bares' notes. And TK is you?

19 **A.** Yes.

20 **Q.** It says "top priorities from TK." Do you see that?

21 **A.** Yes.

22 **Q.** And then on the right it says "cheat codes. Find them.  
23 Use them."

24 You said that at this meeting, didn't you, sir?

25 **A.** It's quite possible.

1   **Q.**   If we can go to page 2. And we pull out -- this is the --  
2   I'll represent this is the same April 28 meeting.

3   **A.**   Okay.

4   **Q.**   Okay?

5   **A.**   Yep. Page 2. All right.

6   **Q.**   It says "tone"?

7   **A.**   Yeah.

8   **Q.**   And it says "The golden time is over. It's wartime."

9   **A.**   Yes.

10   **Q.**   Do you see that?

11   **A.**   I do.

12   **Q.**   You said that to the team, didn't you, sir?

13   **A.**   It sounds like something I would say.

14   **Q.**   And you said "Going slower is not an option anymore";  
15   right?

16   **A.**   Yes.

17   **Q.**   And then you said "In each area, what do we do to win?  
18   Then figure out how to get there."

19            You said that too, didn't you?

20   **A.**   Yeah, it sounds like something I would say.

21   **Q.**   Let's turn in your binder to TX-0682.

22   **A.**   Yep.

23   **Q.**   Is that the same exhibit? I apologize. It's the same  
24   exhibit.

25            Turn to page 6.

1           **MR. VERHOEVEN:** If we could pull out from page 6,  
2 please.

3           **BY MR. VERHOEVEN:**

4           **Q.** This is Mr. Bares' notes again. It says "TK." That's  
5 you; right?

6           **A.** Yeah.

7           **Q.** "TK jam on how to move faster."

8           That's that jam session you talked about yesterday; right?

9           **A.** That's correct.

10          **Q.** So you're having a jam session on how to move faster;  
11 right?

12          **A.** Yep.

13          **Q.** And you say that you "want AL to allow us to leapfrog,"  
14 don't you?

15          **A.** Yes.

16          **Q.** And AL is Mr. Levandowski?

17          **A.** That's correct.

18          **Q.** And leapfrog is jumping over somebody else, isn't it?

19          **A.** Yeah, something like that.

20          **Q.** Yeah. And you were talking about Google, weren't you?

21          **A.** Possibly. I don't know. I don't know if it was  
22 specifically about them.

23          **Q.** Please turn in your binder to the document -- a document  
24 that's been marked as TX-383.

25          **A.** TX-383.

KALANICK - DIRECT / VERHOEVEN

1 Okay. Okay.

2 **MR. VERHOEVEN:** Any objection to 383?

3 **MS. DUNN:** No objection, Your Honor.

4 **THE COURT:** Thank you. Received in evidence.

5 (Trial Exhibit 383 received in evidence.)

6 **MR. VERHOEVEN:** Publish it, please.

7 (Document displayed.)

8 **BY MR. VERHOEVEN:**

9 **Q.** There is a text --

10 **MS. DUNN:** Pardon -- I apologize.

11 **BY MR. VERHOEVEN:**

12 **Q.** This is a text from Mr. Levandowski.

13 **MR. VERHOEVEN:** Is there an objection?

14 **THE COURT:** I'm not sure. Ms. Dunn, are you --

15 **MS. DUNN:** I'm not objecting to the exhibit. There  
16 was a discussion to not display part of this to the public. So  
17 that's all we would ask.

18 **MR. VERHOEVEN:** Is it the telephone number?

19 **MS. DUNN:** Can I? Sorry.

20 (Counsel confer off the record.)

21 **MR. VERHOEVEN:** Okay. Let's just display -- there's  
22 some personal information, Your Honor, that apparently didn't  
23 get redacted.

24 So can we just display this to -- not the public but just  
25 on the screens here?

1           **THE WITNESS:** That's fine.

2           **THE COURT:** All right. Angie, please try to do that.

3           Okay. Let's go.

4           **MR. VERHOEVEN:** Otherwise, there's no objection to  
5 this exhibit?

6           **MS. DUNN:** Otherwise, no objection. Thank you.

7           **THE COURT:** It's in evidence.

8           **BY MR. VERHOEVEN:**

9           **Q.** And you see here this is a text from Mr. Levandowski?

10          **A.** Yeah.

11          **Q.** And he says -- and it's dated May 5, 2016?

12          **A.** That's correct.

13          **Q.** And he says, quote, Driving to SF to meet with Scott ATC  
14 laser guy and guide the team, close quote.

15          Do you see that?

16          **A.** Yes.

17          **Q.** SF is San Francisco?

18          **A.** Yes.

19          **Q.** Scott is Scott Boehmke?

20          **A.** Sounds like it could be, yeah. I don't know.

21          **Q.** Scott Boehmke is part of Uber's ATC program in Pittsburgh?

22          **A.** I'm not familiar with last names. I know somebody named  
23 Scott.

24          **Q.** And this person you know named Scott was in charge of the  
25 LiDAR laser effort at Uber's ATC program in Pittsburgh; isn't

1 that true, sir?

2 **A.** I don't know. I -- I've met Haslim as well. So I thought  
3 he was running that effort. But I'm not in the specifics of  
4 who ran what on -- at this level.

5 **Q.** Scott was in charge specifically of the LiDAR laser  
6 effort; right, sir?

7 **A.** I don't know.

8 **Q.** Levandowski is telling you that he's meeting with him to  
9 guide the team; right?

10 **A.** That appears to be the case, yes.

11 **Q.** To guide the laser team?

12 **A.** Yes.

13 **Q.** All right. Let's move on.

14 Now, we had -- at the very beginning of this examination,  
15 I asked you about an interview you had with Bloomberg. Do you  
16 remember that?

17 **A.** Yes, I do.

18 **Q.** And we had some problem getting it on the screen. So  
19 rather than -- I'll try it without the article.

20 You remember you had an interview; right?

21 **A.** I do.

22 **Q.** And isn't it true, sir, that in this interview the  
23 interviewer from Bloomberg asked you when you reconnected with  
24 Levandowski since the last time you met him?

25 **A.** I don't remember that, but it could have happened.

1   **Q.** Turn in your binder to TX-291, at page 7.

2   **A.** Yep. Was there a certain page?

3   **Q.** Page 7.

4   **A.** Okay.

5               Okay.

6   **Q.** Do you see where it -- there's a question from a fellow  
7 named Max. And there's a reference to TED. Do you see that?

8   **A.** Yeah. I see that, yeah.

9   **Q.** Does this refresh your recollection that you were asked  
10 when you reconnected with Mr. Levandowski after a TED  
11 conference?

12   **A.** Yeah, well, I see that, the question. I see that  
13 question, yes.

14   **Q.** And you told Bloomberg that you reconnected with  
15 Mr. Levandowski after Mr. Levandowski got Otto up and running,  
16 didn't you, sir?

17   **A.** I don't remember saying that, but it's very possible I  
18 could have.

19   **Q.** Do you dispute that?

20   **A.** Well, I didn't meet Anthony at TED in the first place,  
21 so --

22   **Q.** Do you dispute that you told this reporter, in connection  
23 with the announcement of this deal, that you reconnected with  
24 Mr. Levandowski after he got Otto up and running?

25   **A.** It's possible. I just don't know.

1       **Q.**    Do you think the reporter is lying?

2       **A.**    I don't -- is this from the report?

3              **THE COURT:**   Don't answer it.

4              Mr. Verhoeven, that's an argumentative question. It's out  
5              of bounds. You'll have to bring in the reporter if you want to  
6              get that in evidence.

7              **MR. VERHOEVEN:**   Okay, Your Honor.

8              **THE COURT:**    So let's move on.

9              **BY MR. VERHOEVEN:**

10       **Q.**     In fact, you did not reconnect with Mr. Levandowski after  
11       he got Otto up and running; right?

12       **A.**     That's correct. We started talking to him before he got  
13       Otto up and running.

14       **Q.**     Now, after the deal was done, you -- you put  
15       Mr. Levandowski in charge of Uber's entire driverless car  
16       program; right?

17       **A.**     That is correct.

18       **Q.**     So you made him in charge of the entire thing; right?

19       **A.**     That is correct.

20       **Q.**     And isn't it true, sir, that you personally considered at  
21       the time that Mr. Levandowski was a brother from another  
22       mother?

23       **A.**     That's something I said a couple of times, yes.

24              **MR. VERHOEVEN:**   Thank you. I pass the witness.

25              **THE COURT:**    All right. We're going to start with the

1 other side and then -- unless the jury needs to take a bathroom  
2 break or otherwise needs to go into the jury room, then -- all  
3 right. We'll go for about another 20 minutes, and then we'll  
4 take our first break.

5 Ms. Dunn, it's your turn.

6 **MS. DUNN:** Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MS. DUNN:**

9 **Q.** We're on the clock, so I have my stopwatch.

10 Good morning, Mr. Kalanick.

11 **A.** Good morning.

12 **Q.** Mr. Kalanick, did you want to get ahead in the race for  
13 self-driving cars?

14 **A.** Yes.

15 **Q.** Did you compete aggressively for the best engineers in the  
16 world to do that?

17 **A.** Yes.

18 **THE COURT:** May I suggest that you scoot the base back  
19 about two inches closer, of the microphone, so that it's closer  
20 to your voice. And it will be easier for the --

21 **MS. DUNN:** I can also be louder. How about that?

22 **THE COURT:** Well, no, it will pick it up; it's just  
23 not close to your voice.

24 **BY MS. DUNN:**

25 **Q.** Mr. Kalanick, did you compete aggressively for the best

1 engineers in the world to get ahead in the race for  
2 self-driving cars?

3 **A.** Yes.

4 **Q.** And did you hire people from Google to help you do that?

5 **MR. VERHOEVEN:** Objection.

6 **THE WITNESS:** Yes.

7 **MR. VERHOEVEN:** Leading.

8 **THE COURT:** Sustained.

9 **BY MS. DUNN:**

10 **Q.** Where did you find those people that you hired to get  
11 ahead in the race of self-driving cars?

12 **MR. VERHOEVEN:** Same objection.

13 **THE COURT:** All right. I need to explain something to  
14 the -- wait.

15 Well, that's not a leading question. Where?

16 **MR. VERHOEVEN:** Well, the rest of the sentence is,  
17 Your Honor.

18 **THE COURT:** That one is overruled.

19 But I need to explain, since I'm interrupting, something  
20 to the jury.

21 You may be thinking that Mr. Verhoeven wants to have it  
22 both ways. All he did was ask leading questions; right? A  
23 leading question is one that suggests the answer, like "Isn't  
24 it true the light was red?"

25 And as soon as Ms. Dunn gets up there and asks a leading

1 question, Mr. Verhoeven jumps up and objects. So you may be  
2 over there thinking he's trying to have it both ways.

3 That's a legal term, "having it both ways."

4 (Laughter.)

5 **THE COURT:** But, actually, it's okay. Here's the  
6 reason: Ms. Dunn is allied with this witness. And the  
7 time-honored rule is that the lawyer allied with the witness  
8 should not ask leading questions except on -- there are a few  
9 minor exceptions that I won't get into.

10 They're supposed to ask questions like "What did you do?  
11 Who did you meet? When did that happen?" Open-ended  
12 questions.

13 On the other hand, the side that is not allied with the  
14 witness, like Mr. Verhoeven, gets to ask leading questions  
15 because that lawyer wants to make a specific point. "Isn't it  
16 true the light was red?"

17 So it's okay for one side to ask leading questions but the  
18 other side not. I find that jurors get confused over this and  
19 think the lawyer is trying to do something the other side --  
20 you know, objecting when they do it. But no, there's a very  
21 good reason for this difference.

22 All right. So, on preliminary matters, I will let you  
23 lead; but, otherwise, no, you cannot lead the witness.

24 All right. Let's go ahead.

25 **MS. DUNN:** Thank you, Your Honor.

1 BY MS. DUNN:

2 Q. Mr. Kalanick, I'm just going to ask you this directly.

3 To what extent was Anthony Levandowski hired in order to  
4 get Google's trade secrets?

5 A. To no extent at all.

6 Q. Please explain to this jury why you hired him.

7 A. We hired -- we hired Anthony because we felt that he was  
8 incredibly visionary, a very good technologist. And he was  
9 also -- you know, he was also very charming.

10 And we wanted to not just understand how all the  
11 technologies sort of could be put together to make driverless  
12 cars a reality but having a vision for what that means for  
13 cities, how that changes the way cities work, and how to sort  
14 of couple that with a ride-sharing system.

15 And he had -- he really had a vision for how to make that  
16 work that was compelling. And that's -- that's why we hired  
17 him.

18 Q. And how do you feel about him now?

19 A. Look, this has been a difficult process. He had some --  
20 this was -- this makes it not as great as what we thought it  
21 was at the beginning.

22 Q. And you testified that you were interested in  
23 Mr. Levandowski because of your desire to work in self-driving  
24 cars; is that right?

25 A. That's correct.

1       **Q.**    Why was self-driving technology so important to you as CEO  
2   of Uber?

3       **A.**    It was important because, of course, self-driving makes it  
4   more safe, makes getting around cities more safe. It also  
5   makes it more efficient.

6                 And, ultimately, self-driving is part of the future. And  
7   Uber wants to be part of that future. And so we need to  
8   continue to innovate as well. And that's why we must be part  
9   of that.

10      **Q.**    So I'm going to take just a small step back. And  
11   Mr. Verhoeven asked you if you're the founder of Uber --

12      **A.**    Yes.

13      **Q.**    -- is that right?

14      **A.**    That's correct.

15      **Q.**    How did you come up with the idea for Uber?

16      **A.**    You know, it was actually my cofounder's idea, a friend of  
17   mine named Garrett Camp.

18                 We were in Paris at a tech conference. And quite often in  
19   Paris you can't get a taxi, can't get around. It's kind of  
20   like San Francisco pre-Uber. You're doing a lot of walking and  
21   a lot driving. So if you're in Paris and you're not driving,  
22   you're walking home.

23                 And we're walking home late at night. He said, "I want to  
24   push a button and get a ride." And it's sort of one of those  
25   smack-your-head moments, like, what a simple, simple idea.

1 It's really complex technology to make it a reality, but that  
2 was the beginnings of Uber.

3 **Q.** And you're no longer CEO; is that right?

4 **A.** That's correct.

5 **Q.** But you were CEO. What was it like to be CEO of Uber?

6 **A.** It was -- it was a lot of fun. And it was different at  
7 different times because, when we first got started, imagine,  
8 like, six people being around a table, and that's your whole  
9 team.

10 And day in, day out, you just dream what Uber could be.

11 But as it grew, it becomes this huge thing. It's not just your  
12 team of six; now you have 15,000 people in 85 countries, in  
13 basically every major city in the world.

14 And your job sort of goes from being the team of six, kind  
15 of in the trenches trying to figure out what the future is  
16 going to look like, to empowering literally thousands of teams  
17 of six to have that same feeling for their city, for the  
18 technology they're building. But it was always just a lot of  
19 fun. It was a different thing to solve every day and a new  
20 thing to invent every day. It was great.

21 **Q.** And when it came to self-driving technology, as CEO, what  
22 was your first priority?

23 **A.** The number one priority for self-driving is you've got to  
24 get the best people, the best engineers and the best  
25 scientists, to make this a reality, because it's not like this

1 is already defined. It's not like it already exists. You  
2 literally have to invent things that don't exist yet.

3 And nobody solved it. And this is why we are all still  
4 driving or in a car with somebody who is. It hasn't been  
5 solved yet.

6 **Q.** Tell us how you first thought about getting into the  
7 self-driving business.

8 **A.** Well, look, in -- let's see -- summer, late summer of  
9 2013, we got an investment from Google. In fact, when we were  
10 closing the deal, I was meeting with Larry Page. And they  
11 picked me up in a self-driving car to meet with Larry Page.  
12 And I'm like, that's pretty cool.

13 And the general understanding was, hey, look, Google's  
14 doing this self-driving thing. Uber is doing this ride-sharing  
15 thing. Maybe we can -- we can figure out a way to put those  
16 two together and partner up to make that future happen.

17 **Q.** So you said Google invested. When was that?

18 **A.** That was August 2013.

19 **Q.** Okay. And at that time in August of 2013, from your  
20 perspective, what was the relationship between the two  
21 companies?

22 **A.** It was kind of like -- it was kind of like a little  
23 brother with a big brother. It may be hard to sort of grok  
24 right now, but at the time Uber was maybe -- I don't know -- a  
25 couple hundred employees; pretty small. And, you know, look,

1 Google was this huge partner of ours, investor on the board.

2 I looked at, you know, David Drummond and Larry Page kind  
3 of as mentors; but, again, that's the little brother maybe --  
4 maybe trying to get more of their time than they were willing  
5 to give. But, nonetheless, it was a good relationship.

6 Q. And at that time, did you consider Google to be a  
7 competitor?

8 A. I did not.

9 Q. And at some point, did you start to hear rumors that  
10 Google was going to compete with Uber in the ride-sharing  
11 space?

12 A. Yeah. That happened in sort of -- we started hearing  
13 those rumors in May 2014.

14 Q. And what did you do when you heard those rumors?

15 A. Well, we -- we constantly would just reach out to Google  
16 and say, Look, we heard these rumors. We're not sure what  
17 that's about. We still want to partner with you. We still  
18 think it's a good idea. We do the ride-sharing thing, you do  
19 the autonomy thing and self-driving thing, and we can put those  
20 together.

21 So we were just constantly reaching out, saying, We're  
22 hearing rumors you're going to do the ride-sharing thing  
23 yourself and the autonomy thing yourself and not partner, but  
24 we were sort of optimistic in trying to figure out a way to  
25 partner.

1   **Q.**   If you look in your binder on Exhibit 1771.

2           **THE COURT:**   Is that in evidence yet?

3           **MS. DUNN:**   No, but I think there's no objection.

4           Mr. Verhoeven?

5           **THE COURT:**   1771. Any objection?

6           **MR. VERHOEVEN:**   No objection, Your Honor.

7           **THE COURT:**   Received in evidence.

8           (Trial Exhibit 1771 received in evidence.)

9           (Document displayed.)

10          **THE WITNESS:**   Okay.

11         **BY MS. DUNN:**

12         **Q.**    Okay. Do you recognize this email to be an email exchange  
13         with -- between you and David Drummond, the chief legal officer  
14         of Google?

15         **A.**    Yes, I do.

16         **Q.**    Dated March 7, 2015?

17         **A.**    Yes.

18           **MS. DUNN:**   Your Honor, we offer 1771 into evidence.

19           **THE COURT:**   In evidence. Thanks.

20           **MS. DUNN:**   Great.

21         **BY MS. DUNN:**

22         **Q.**    All right. If we could just focus at the first email in  
23         this chain. It's from blank to blank. The subject is Intel.

24         **A.**    Yeah.

25         **Q.**    And it says, "Heard from a reliable source that Google

1 will be starting a self-driving service in MV in 3 months."

2 Is MV Mountain View?

3 **A.** I believe so, yeah.

4 **Q.** Okay. And it looks like you forward this email to  
5 Mr. Drummond. Can you explain to the jury what this is.

6 **A.** Yeah. So somebody sent me an email telling me this,  
7 giving me information about whether or how Google might be  
8 rolling out a ride-sharing service, obviously counter to an  
9 understanding I thought we had.

10 You don't know if it's true or not, so I'm forwarding to  
11 David Drummond saying, I don't know if this is true. And David  
12 Drummond is on our board. Saying, hey, look, I thought we had  
13 an understanding. Maybe like, let's talk. Let's talk about  
14 it. Let's see if we can partner because we still would love to  
15 partner on this.

16 **Q.** Okay. So your email says "Is the below true? We get  
17 stuff like this more than I would like. Without any dialogue,  
18 we get pushed into the assumption that Google is competing in  
19 the short term and has probably been planning to do so for  
20 quite a bit longer than has been let on. I hope I'm wrong  
21 here. Just need to do a meeting with Larry ASAP."

22 And Larry is Mr. Page?

23 **A.** That's correct.

24 **Q.** And why did you want a meeting with Larry?

25 **A.** Well, look, I mean, that's who I thought I had the

1 understanding with. And every time we would try to talk about  
2 partnership, it would always go back to Larry Page saying it's  
3 not -- that he didn't want to have that meeting or it wasn't  
4 quite time to have that meeting or we just got no answer. So  
5 it was apparent that he was kind of calling the shots on this.

6 **MS. DUNN:** Your Honor, I'd like to -- sorry. Retract  
7 that.

8 **BY MS. DUNN:**

9 **Q.** Mr. Kalanick, please turn in your binder to Exhibit 1770.

10 **A.** Okay.

11 **MS. DUNN:** Is there any objection?

12 **MR. VERHOEVEN:** One second.

13 No objection, Your Honor.

14 **MS. DUNN:** All right. Your Honor, we'd like to  
15 move --

16 **THE COURT:** Received in evidence.

17 (Trial Exhibit 1770 received in evidence.)

18 (Document displayed.)

19 **BY MS. DUNN:**

20 **Q.** Mr. Kalanick, do you recognize this email to be another  
21 email exchange between yourself and Mr. Drummond a few months  
22 earlier than the one we just saw, this one from January of  
23 2015?

24 **A.** That's correct.

25 **Q.** Okay. And if we could go to the first email in that

1 exchange, where you say, "Just got the transcript from the Q&A  
2 at the Detroit Auto Show. Urmson" -- is that Chris Urmson?

3 **A.** Yes.

4 **Q.** "Chris Urmson is openly discussing rolling out an  
5 autonomous vehicle ride-sharing service. I'm thinking it's  
6 time to have a chat with Larry directly."

7 Mr. Kalanick, did you ever get a chance to speak with  
8 Mr. Page?

9 **A.** Yes. Eventually. I think it was a bit after this, yes.

10 **Q.** Okay. When was that?

11 **A.** I feel like it was in the spring, so maybe a few months,  
12 three or four months after this.

13 **Q.** And was that meeting after Uber had already hired the  
14 group from Carnegie Mellon University?

15 **A.** Yeah. We just weren't getting any traction talking about  
16 partnerships, so we then acquired the CMU team in Pittsburgh  
17 and started our own autonomous sort of self-driving effort.

18 **Q.** Okay. And where did that meeting take place?

19 **A.** That took place at Google.

20 **Q.** Okay. And please explain to us what you remember of that  
21 meeting.

22 **A.** You know, look, we were there to do -- to continue to talk  
23 about partnership. That was a very common theme for us. Larry  
24 was fairly upset with us about us acquiring the CMU team and  
25 starting an autonomy effort for ourselves that competed with

1 what they were doing.

2 **Q.** Do you remember what he said to you at that meeting?

3 **A.** He sort of was a little angsty and said, "Why are you  
4 doing my thing?" and was just upset.

5 **Q.** And was this prior to the acquisition of Otto and  
6 Mr. Levandowski's team?

7 **A.** Yes, that was prior to that.

8 **Q.** Okay. Let's talk a little bit about your conversations  
9 with Mr. Levandowski. This is something Mr. Verhoeven also  
10 asked you about.

11 When did you personally get involved in those  
12 conversations with Mr. Levandowski?

13 **A.** December 2015.

14 **Q.** And prior to your involvement, had Uber executives already  
15 been speaking to Mr. Levandowski?

16 **A.** I believe they had been speaking to him for at least a  
17 couple of months, maybe a few. I'm not sure exactly how long.

18 **Q.** How well did you know Mr. Levandowski when you first got  
19 involved?

20 **A.** I didn't know him at all.

21 **Q.** And did you try to get to know him better?

22 **A.** Yes.

23 **Q.** And when Mr. Verhoeven asked you whether you remembered a  
24 specific meeting on December 20th, you didn't remember that  
25 specific meeting, but do you remember generally in that period

1 of time what you and Mr. Levandowski discussed?

2 **A.** Yeah, generally.

3 I mean, it started out with -- I think there were  
4 conversations about he's going to start a company. Was  
5 basically seeing if he could be -- if he could be a vendor, a  
6 supplier to our company, or potentially could he work at Uber.  
7 That was obviously something we were more interested in. And  
8 then there's sort of the combination of the two, I think, that  
9 we ended up at.

10 And, you know, it's sort of early on it was more about  
11 customer-vendor, and over time it became more about how do we  
12 bring him on board at Uber.

13 **Q.** And please tell the jury, Mr. Kalanick, at any point, if  
14 at all, during those discussions did you ask Mr. Levandowski to  
15 bring Google information to Uber?

16 **A.** I did not, never.

17 **Q.** And at any point, if at all, in those discussions, did  
18 Mr. Levandowski tell you he was going to bring Google  
19 information to Uber?

20 **A.** Absolutely not.

21 **Q.** All right. Apart from the allegations that Waymo has made  
22 in its complaint, have you ever heard from anyone that  
23 Mr. Levandowski downloaded files from Google for the purpose of  
24 bringing them to Uber or to Otto?

25 **A.** Never. Not from anybody.

1       Q. I'm going to ask you about a few things that Mr. Verhoeven  
2 covered in his examination, but the first thing I'm going to  
3 ask you is whether you recall if Mr. Verhoeven asked you any  
4 questions about Uber taking Google's trade secrets?

5       A. Can you restate the question?

6       Q. Do you remember whether Mr. Verhoeven asked you any  
7 questions in his examination about whether Uber took Google's  
8 trade secrets?

9       A. I don't remember anything specifically, but I can confirm  
10 that -- well, I think that -- I've already said what I said.

11           **MS. DUNN:** All right. I'd like to put Exhibit TX-170,  
12 which is in evidence, on the screen.

13           (Document displayed.)

14           **BY MS. DUNN:**

15       Q. All right. Mr. Kalanick, you've seen these already.  
16 These are Mr. Bares', John Bares' notes?

17       A. Yes.

18       Q. The jury met him via video yesterday.

19           What was Mr. Bares' job at Uber, just to remind the jury?

20       A. Well, when we first acquired the CMU team, he ran the  
21 autonomy effort, what was called ATC at the time and ultimately  
22 ATG. So he was the first head of our autonomy efforts.

23       Q. Okay. If you look at the first page, at the very top it  
24 says "NewCo." Do you see that?

25       A. Yes, I do.

1       **Q.**    Okay. And was NewCo the company that Mr. Levandowski was  
2 planning to start when you were meeting with him?

3       **A.**    It was a code name for the company, yes.

4       **Q.**    Okay. And if you look down on that first page, there's a  
5 line that says "Deal, buy a laser."

6                  **MS. DUNN:** Can we highlight that?

7       **BY MS. DUNN:**

8       **Q.**    Do you see that, "buy a laser"?

9       **A.**    I sure do.

10      **Q.**    Okay. At some point in late December, early January, was  
11 Uber considering being a customer of Anthony Levandowski's  
12 company-to-be?

13      **A.**    Yes.

14      **Q.**    Okay.

15      **A.**    That's correct.

16      **Q.**    And at some point, did Uber decide instead to acquire  
17 them?

18      **A.**    Yes, that's correct.

19      **Q.**    Okay. If you then go down the page, there's the part that  
20 Mr. Verhoeven asked you about, where it says "Meeting with TK."  
21 Does that -- do you see that?

22      **A.**    Yeah.

23      **Q.**    Okay.

24                  **MS. DUNN:** And if we could put up the part that says  
25 "Risk," as well as the next part, that would be helpful. Next

1 to "TK what we want."

2 **BY MS. DUNN:**

3 Q. So it says "Risk. They get bought by a competitor or  
4 their product enables their competitor."

5 What's that about, if you know?

6 A. And, again, these aren't my notes, but if they -- if we  
7 have a supplier and somebody's -- somebody's supplying you that  
8 product but then they -- I guess they fail on the first batch,  
9 well, then you don't have a product. Or if they get bought by  
10 a competitor and then they stop making your product that you  
11 are depending on, then that's an issue.

12 Or you can help them make a product that they then sell to  
13 your competitor, which is also a thing.

14 Q. So better to acquire them than to be a customer; is that  
15 the point?

16 A. Sometimes, yes.

17 Q. Okay. And the next part says "Can pay at milestones,"  
18 which was eventually an aspect of the acquisition; is that  
19 right?

20 A. Look, milestones were certainly part of the acquisition.  
21 It -- I didn't write these notes, so --

22 Q. Okay. And as an acquirer, did Uber start to think about  
23 what it would want in the deal from NewCo?

24 A. Of course.

25 Q. Okay. And did Uber want -- if it was going to make a deal

1 with NewCo to have its IT, it's intellectual property?

2 **A.** I mean, when you acquire something, you do acquire the  
3 developed intellectual property of the company that you  
4 acquire.

5 **Q.** Why?

6 **A.** Well, that's part of the acquisition; right? So at the  
7 time of the acquisition, they had autonomous trucks that were  
8 going up and down 280. I got to take a couple rides in them.  
9 It was fun. The -- but, sorry, I digress.

10 The people develop -- they develop technology. That is  
11 the basis of a company. And then, when you acquire them, you  
12 acquire that IP.

13 **Q.** Mr. Kalanick, what is John Bares like? You know him;  
14 right?

15 **A.** Yeah. So John Bares is a professor at CMU. Pretty  
16 earnest guy. You know, just very straightforward. And a  
17 little bit of aw-shucks kind of feel to him. And an overall  
18 good guy. He's always looking to learn. And I -- I loved  
19 working with him.

20 **Q.** All right. And he apparently took notes in meetings?

21 **A.** Yes.

22 **Q.** Pages and pages and pages of notes?

23 **A.** Yes.

24 **Q.** All right. And so if someone had gone to a meeting with  
25 John Bares, you say he's an earnest, straightforward guy, and

1 they said, "Let's steal all of Google's IP," do you think John  
2 Bares would have just sat there and sat quietly typing up his  
3 notes?

4 **MR. VERHOEVEN:** Objection. Leading.

5 **THE COURT:** And argumentative. Sustained.

6 **BY MS. DUNN:**

7 **Q.** Mr. Kalanick, when you said "IP," when you say "cheat  
8 codes," what did John Bares do?

9 **MR. VERHOEVEN:** Objection. Foundation.

10 **THE COURT:** If you remember, you can answer. But you  
11 must remember before you give that answer.

12 **THE WITNESS:** Okay. Fair enough.

13 Can you ask the question one more time?

14 **BY MS. DUNN:**

15 **Q.** I'll rephrase the question because it's fair.

16 At these meetings you sat at with John Bares, what did he  
17 do?

18 **A.** I mean, he participated in the meetings. He was a thought  
19 partner. You know, we had these jam sessions like I talked  
20 about, a -- it was like a jazz ensemble-type thing, and he had  
21 his own ideas about how autonomy should work, and he  
22 participated in those meetings.

23 **Q.** Okay. So yesterday you helped us understand jam sesh.

24 **A.** Yeah.

25 **Q.** Today, help us understand cheat codes.

1     A.    Cheat codes are like, you know, way -- elegant solutions  
2 to problems that haven't already been thought of.

3           There's a lot of examples I can give, like one might be  
4 Tesla cars. Right? People buy Tesla cars. They cost, I don't  
5 know, 40 grand, sometimes a lot more. But there's a lot of  
6 them on the road.

7           But, in the meantime, Tesla also has a bunch of sensors in  
8 that car that pulls data in that helps their autopilot feature,  
9 which is kind of autonomy-like, get better. They've got people  
10 paying Tesla to help their self-driving effort do better. We  
11 would consider that a cheat code, for example.

12          Uber has to -- Uber has to understand how long it takes to  
13 get from Point A to Point B on the road. You request a car.  
14 We tell you how many minutes it takes. If the car gets stuck  
15 behind a red light, that car's going to be late. If it gets  
16 stuck behind five, it's going to be really late.

17          How do we know what are all -- what's every state of every  
18 red light between you and the car? Well, we could put a video  
19 camera on every corner to see what the state of that light is  
20 so that we could give you an accurate time, or we can use the  
21 motion sensors in the driver app, because they have the driver  
22 app on the phone and we can determine when those cars stop,  
23 that we can determine when they're at a red light.

24          And you do that across an entire city and now, instead of  
25 spending a billion dollars on video cameras, you now have

1 written a small amount of code that determines when cars are at  
2 red lights and you have a realtime view of what the state of  
3 every traffic light is in the city. And not just in one city  
4 but in 500 cities. So that's like an example of a cheat code.

5 **THE COURT:** All right. We need to -- you can ask  
6 another couple of questions, but we need to take our break. So  
7 I want you to find a resting point.

8 **MS. DUNN:** Your Honor, I probably have ten minutes  
9 left total.

10 **THE COURT:** What? How much?

11 **MR. SCHMIDT:** Ten, but I'm happy to also take a break  
12 and go on from there.

13 **THE COURT:** Well, I think we need to take a break now.

14 **MS. DUNN:** Sure.

15 **THE COURT:** All right. Remember the admonition. No  
16 talking to each other. See you back here in 15 minutes.

17 **THE CLERK:** All rise for the jury.

18 (Jury out at 9:22 a.m.)

19 **THE COURT:** Okay. Everyone be seated. The witness  
20 can step down. And you can take your bathroom break too and be  
21 back here in 15 minutes, please.

22 **THE WITNESS:** And I go that direction?

23 **THE COURT:** Yeah, you go right through the double  
24 doors there, please. Thank you.

25 Counsel, you had given me, I believe yesterday or this

1 morning, a binder that you proposed to give to the jury that  
2 has in it the timeline and the trade secret list and the  
3 witness -- the key witnesses.

4 I don't like giving a big thick binder like this because  
5 it's too inconvenient. But we've already given them the  
6 timeline and the trade secret list, and I'm going to hand out  
7 the one further, this witness list that you improved on, which  
8 I think is a fine key witness list. And we will give that one  
9 to the jury and let them fold it into their steno pads.

10 Any problem with that? Is that okay with both sides?

11 **MR. GONZÁLEZ:** That's fine, Your Honor.

12 **THE COURT:** Wait a minute.

13 **MR. GONZÁLEZ:** I'm sorry. I'm being told that we may  
14 not have agreed to that version, Your Honor, so --

15 **THE COURT:** Well, then I'm going to hand it back to  
16 you. And when I come back, you two figure out -- see, who was  
17 it? It was on the Waymo side that gave this to my courtroom  
18 deputy and made it sound like this was agreed to. So you -- in  
19 the break, you work out any disagreements that you have on  
20 this. I don't want to -- I'm not going to hand it out to the  
21 jury unless it's agreed on.

22 **MR. EISEMAN:** We'll figure it out, Your Honor.

23 **THE COURT:** All right. Thank you. All right. See  
24 you in 15.

25 (Recess taken at 9:24 a.m.)

1 (Proceedings resumed at 9:43 a.m.)

2 **THE COURT:** Be seated.

3 Let's go ahead and bring the jury back.

4 While the jury is being assembled, Counsel, please  
5 remember that anything shown on this overhead screen does not  
6 get transcribed. Does not get transcribed. It will just say  
7 "Video played" in the transcript.

8 That's why you have to give that version to the court  
9 reporter. It's unfair for you to expect court reporters to  
10 transcribe audio coming from a video. Sometimes I notice --  
11 I'm bringing this up because one of them tried, and it's not  
12 the right thing to do.

13 You lawyers have got to keep in mind that, if you want it  
14 in the transcript, it's got to be the spoken word here in  
15 court, not an audio word. All right?

16 **MR. VERHOEVEN:** Yes, Your Honor. Real quick  
17 housekeeping.

18 **THE COURT:** Yeah.

19 **MR. VERHOEVEN:** We've conferred over the break and  
20 reached agreement to shorten time.

21 We are going to forego calling the next witness,  
22 Mr. Poetzscher. And, in exchange, I believe Uber has agreed to  
23 the admissibility of two exhibits.

24 **THE COURT:** All right. What are those two?

25 **MR. VERHOEVEN:** TX-259 and TX-263.

1           And this is obviously without prejudice of their right to  
2 call Mr. Poetzscher in their case in chief.

3           **THE COURT:** Is that agreed to?

4           **MR. GONZÁLEZ:** That's correct, Your Honor.

5           **THE COURT:** Thank you. Those two are now in evidence.

6           (Trial Exhibits 259 and 263 received in evidence.)

7           **THE COURT:** And as soon as the jury comes in, we'll  
8 roll right along.

9           Kanu, do you have that list of key witnesses to hand out?  
10 No? All right. We'll do it at the next break.

11           **MR. GONZÁLEZ:** Your Honor, there may be an issue.

12           **THE COURT:** All right. Well, is there one?

13           **MR. EISEMAN:** No, we worked out the issues. It's just  
14 being reprinted, Your Honor.

15           **THE COURT:** All right. Okay. Well, you'll bring in  
16 the ten copies, so you can just hand it up to the jury. Thank  
17 you for working that out.

18           We're ready. Let's go.

19           **THE CLERK:** All rise for the jury.

20           (Jury enters at 9:45 a.m.)

21           **THE COURT:** Welcome back. Be seated.

22           All right. Ms. Dunn, please continue.

23           **MS. DUNN:** Thank you, Your Honor.

24           **BY MS. DUNN:**

25           **Q.** Mr. Kalanick, when you were talking with Mr. Verhoeven, he

1 asked you about an indemnity agreement that Uber would  
2 indemnify Google -- or Anthony Levandowski.

3 Do you remember that?

4 **A.** Yes.

5 **Q.** Okay. And you said that at Uber you had agreed to the  
6 indemnity; right?

7 **A.** Yes.

8 **Q.** That Uber had agreed?

9 And you also said that you did that in part because it was  
10 thought that Google might bring a lawsuit.

11 **A.** That's correct.

12 **Q.** Why did Uber think that Google might bring a lawsuit?

13 **A.** I mean, look, it started back at the CMU acquisition.

14 Larry was just very angry, just upset that we were doing his  
15 thing. And --

16 **THE COURT:** Explain. The jury's not going to remember  
17 what CMU means.

18 **THE WITNESS:** Sorry. Carnegie Melon University.

19 That's a university in -- right around Pittsburgh where lots of  
20 professors and scientists that do robotics and autonomous  
21 technology. Sorry, I --

22 **THE COURT:** All right. I interrupted you, so please  
23 continue with your answer.

24 **THE WITNESS:** Maybe restate the question because I got  
25 a little lost here. Sorry.

1 BY MS. DUNN:

2 Q. The question was, why did Uber think that Google might  
3 bring a lawsuit following the Otto acquisition?

4 A. So when we acquired the CMU team and we were eventually --  
5 we acquired it because we couldn't get meetings and we couldn't  
6 figure out if they were still up for partnering.

7 When we finally got the meeting, Larry made it very clear  
8 that he was very upset with us and not happy that we were doing  
9 autonomy. And everything we would get in terms of a signal  
10 from other people who knew him or knew people around him was  
11 that generally Google was super not happy, unpumped, about us  
12 doing this.

13 And so when you go and hire a group of people, a large  
14 group of people, acquire a company where a large group of  
15 people, you know, come from there, you know, that competitive  
16 thing, those competitive juices get flowing, and that means  
17 there is a higher likelihood of a lawsuit of some kind.

18 Q. Now, you acknowledged that you did not read the merger  
19 agreement or the indemnity treatment. Is that correct?

20 A. That's correct.

21 Q. Why not?

22 A. Well, as CEO of a big company, you're getting literally  
23 hundreds of documents to sign a month. Hundreds.

24 And think of each of those things you're signing is almost  
25 like when you go get a mortgage or buy a house. Like reading

1 every single page, like, will take you -- could take you a  
2 week. But I'm getting hundreds of those a month.

3 And so what you do is you have your legal department  
4 review the documents, summarize them, and then present them to  
5 you to sign. And sometimes you actually have to sort of  
6 empower them to make judgment calls.

7 When you get to be a 15,000-person organization, the CEO  
8 can't read every document and read every word in every  
9 document. It's just not possible at that scale. But on  
10 important deals, you still have to have some kind of summary of  
11 what's going on, but you may not be in all the details of every  
12 clause of every contract that exists.

13 **Q.** Now, Mr. Verhoeven also asked you about a number of emails  
14 you had with Mr. Levandowski. And I'm just going to put one of  
15 those on the screen. Trial Exhibit 10275. And also,  
16 Mr. Kalanick, if you look in your white binder, the one right  
17 behind you, you'll find it there.

18 **THE COURT:** Is that an email or a text? I can't tell.

19 **MS. DUNN:** It's a text exchange.

20 **BY MS. DUNN:**

21 **Q.** And I'll direct you to pages 20, 21, and 22.

22 **A.** 10275; is that right?

23 **Q.** That's right.

24 **MS. DUNN:** And if we could put -- is it possible to do  
25 a side-by-side with 20 and 22?

1           **THE WITNESS:** Okay. So what page? I'm sorry.

2           **BY MS. DUNN:**

3           **Q.** Turn to page 20, please.

4           **A.** Okay. Yeah.

5           **Q.** It's the text that says something about "second place is  
6 first loser." Do you see that?

7           **A.** Yeah, I see it.

8           **MS. DUNN:** Okay. Can we put that up, and can we make  
9 it big so people can see it, please. Thanks. All right.  
10 Great.

11           And then put up page 22, the response. If you keep it up  
12 on the screen. Is that Mr. Guevera or Mr. Fisher? Thank you.  
13 All right.

14           (Document displayed.)

15           **BY MS. DUNN:**

16           **Q.** So the text --

17           **MS. DUNN:** If we can blow it up.

18           **BY MS. DUNN:**

19           **Q.** -- on page 20 says "I just see this as a race and we need  
20 to win. Second place is first loser."

21           Do you see that?

22           **A.** Yes.

23           **Q.** Okay. And then Mr. Verhoeven also asked you about  
24 page 22.

25           **MS. DUNN:** And if we could keep both of these on the

1 screen at the same time.

2 **BY MS. DUNN:**

3 **Q.** And that says "agreed."

4 **A.** Yes.

5 **Q.** Right?

6 And he asked you about the time stamps on these text  
7 messages; right?

8 **A.** Yes, he did.

9 **MS. DUNN:** Can we see them both at the -- at the same  
10 time, please.

11 (Document displayed.)

12 **MS. DUNN:** All right. Great.

13 **THE WITNESS:** That's pretty good. Okay.

14 **BY MS. DUNN:**

15 **Q.** This is when we appreciate the tech people very much.

16 **A.** Yeah.

17 **Q.** All right. So this says "I just see this as a race and we  
18 need to win. Second place is first loser."

19 And then Mr. Verhoeven showed you the text that says  
20 "agreed"; right?

21 **A.** Yes.

22 **Q.** Okay. If you look at page 21, you can see the text in  
23 between these two that Mr. Verhoeven skipped over. Do you see  
24 that?

25 **A.** Yes, I do.

1     **Q.**    Okay. And what does that say?

2     **A.**    It says "transportation is social graph of the physical  
3       world."

4     **Q.**    Okay. And so if you look at the time stamps,  
5       Mr. Kalanick, your "agreed" follows the text that says  
6       "transportation is a social graph of physical world."

7           Do you see that?

8     **A.**    Yes.

9     **Q.**    All right. Mr. Verhoeven also asked you --

10           **THE COURT:** Wait. Go back over that again. So put  
11       the one up there about the transportation is the graph. Who  
12       wrote that one?

13           It went by me too fast. Could you put it back up there.

14           I'm sorry. You can do it later. I -- all right. This  
15       it? Is this it?

16           **MS. DUNN:** That's it.

17           (Document displayed.)

18           **BY MS. DUNN:**

19     **Q.**    So this was the text --

20           **THE COURT:** What's confusing me is I -- it went by so  
21       fast. Who is it -- let me ask the witness. Who is it that  
22       raised that? You?

23           **THE WITNESS:** I'm sending this to Anthony.

24           **THE COURT:** And then -- and you said something like  
25       transportation --

1                   **THE WITNESS:** Is the social graph of the physical  
2 world.

3                   **THE COURT:** -- graph of the physical world. And  
4 that's at 9:03 UTC.

5                   **THE WITNESS:** 9:03:11, yeah.

6                   **THE COURT:** All right.

7                   **THE WITNESS:** I think basically "agreed," that comes  
8 after -- yeah, I'm not sure what -- I'm not sure.

9                   **THE COURT:** But who was it that wrote "agreed"?

10                  **THE WITNESS:** That -- was that me? Hold on. Yeah, it  
11 looks like it's from me.

12                  **THE COURT:** So you're agreeing with your own comment?  
13 I don't understand.

14                  **THE WITNESS:** I'm not sure.

15                  **THE COURT:** What are you agreeing with?

16                  **THE WITNESS:** I don't know. It's been a long time  
17 since these texts.

18                  **THE COURT:** All right. Let's go ahead.

19                  **MS. DUNN:** It's good to show all the texts, I think.

20                  **BY MS. DUNN:**

21                  **Q.** All right. Mr. Kalanick, Mr. Verhoeven also asked you  
22 about the April 11th board meeting. Did you -- when you talked  
23 to the board on April 11th, about this deal, did you feel  
24 comfortable moving forward with the deal?

25                  **A.** Yes, I did.

1       **Q.**    Okay. And did you convey that to the board?

2       **A.**    Yes. Generally, yes.

3       **Q.**    Okay. And by that point in time, had you had any  
4 discussions with Mr. Levandowski on the topic of bringing  
5 Google IP to Uber?

6       **A.**    Only that we're making sure that no content from any  
7 previous employer comes over to Uber.

8       **Q.**    Do you remember a meeting in July 2016, that you attended  
9 with Mr. Krafcik, the CEO of Waymo?

10      **A.**    Yes, I do.

11      **Q.**    Okay. And this was prior to the Otto acquisition. And  
12 did you tell Mr. Krafcik at this meeting about the Otto  
13 acquisition?

14      **A.**    No.

15      **Q.**    Why not?

16      **A.**    Because we had basically hired people, but we hadn't  
17 announced it publicly. And it just didn't seem appropriate to  
18 tell somebody something that was confidential that we hadn't  
19 announced publicly yet, especially if it's a competitor.

20      **Q.**    And at that meeting, did anyone from Google mention that  
21 Google wanted to consume Uber's profits?

22           **MR. VERHOEVEN:** Objection. Leading.

23           **THE COURT:** It's -- that is a leading question.

24 Please rephrase it.

25           **MS. DUNN:** I can rephrase.

1 **BY MS. DUNN:**

2 Q. What indications at that meeting -- what express  
3 indications, if any, did you get at that meeting that Google  
4 had decided to compete with Uber?

5 **MR. VERHOEVEN:** Same objection.

6 **THE COURT:** No. Just ask what, if anything, was said  
7 on the subject of Google at that meeting. That would be okay.

8 **BY MS. DUNN:**

9 Q. Okay. What if anything was said on the subject of Google  
10 at that meeting?

11 A. Look, the -- this meeting was a repeat of many meetings  
12 we've had before, which is we're going to them really  
13 interested in partnering in some fashion. We do the  
14 ride-sharing thing. We're starting to do the autonomy thing.

15 But they've been doing the autonomy thing for a bit  
16 longer. Maybe we can find a way to take our efforts and  
17 partner to get to the future faster. And so we're always just  
18 sort of going that direction, and they're generally not  
19 receptive.

20 Q. And after the acquisition was announced, was there any  
21 outreach to Waymo to inform them of the acquisition?

22 A. Yes.

23 Q. And what happened then?

24 A. Look, we -- I think it was Emil Michael reached out to  
25 Krafcik and said, hey, look, we had some news today. Let's get

1 on the phone. And Krafcik responded with --

2       **MR. VERHOEVEN:** Objection. Hearsay.

3       **THE COURT:** Yes.

4       **MR. VERHOEVEN:** And foundation, Your Honor. He wasn't  
5 even there.

6       **THE COURT:** Were you there?

7       **THE WITNESS:** Where?

8       **THE COURT:** Did you personally hear this about  
9 Krafcik?

10      **THE WITNESS:** There was an email exchange between Emil  
11 and Krafcik, but that's all I've seen. I wasn't on the phone  
12 call that they had.

13      **THE COURT:** Well, I'm going to allow the testimony. I  
14 may have to give a -- a limiting instruction, but I want to  
15 hear it first. But the basic -- even though you're normally  
16 right. Their own internal communications would be inadmissible  
17 hearsay. That part is correct.

18      But, nevertheless, the -- they may come in for the purpose  
19 of showing what -- proving up the transaction, to use a looser  
20 term.

21      So I'm going to allow the question. So please ask it  
22 again.

23      **BY MS. DUNN:**

24      **Q.** Mr. Kalanick, what are you aware of that was communicated  
25 at the executive level from Uber to Google following the Otto

1 acquisition?

2           **THE COURT:** Well, now, see "aware of," that calls for  
3 hearsay.

4           **MS. DUNN:** Okay.

5           **THE COURT:** So you can ask him what he communicated to  
6 Uber -- I'm sorry -- to Google or what he overheard somebody  
7 else communicating, but he can't say he under -- I know lawyers  
8 like this, but no -- he understands something got communicated.  
9 That doesn't work.

10          **MS. DUNN:** Okay.

11          **THE COURT:** At least when there's an objection.

12          **MS. DUNN:** I can move on, Your Honor.

13          **BY MS. DUNN:**

14          **Q.** Mr. Kalanick, following the Otto acquisition, did you  
15 personally have any conversations with any Google executives?

16          **A.** Yes. Yes, I did.

17          **Q.** And which Google executive was that?

18          **A.** Larry Page.

19          **Q.** When did you speak with Mr. Page?

20          **A.** That was a phone call in October of 2016, yeah.

21          **Q.** So that phone call happened before this lawsuit was filed  
22 but after the Otto acquisition?

23          **A.** Correct.

24          **Q.** How did the conversation come about with Mr. Page?

25          **A.** We had heard that -- we had heard through different folks

1 that Larry Page was upset about a different kind of technology.

2 Google had been working on flying cars for some time. And  
3 they were under the impression -- at least we heard that they  
4 were under the impression that we were building flying cars,  
5 too, maybe again doing their thing.

6 And I wanted to call him and let him know that we are not  
7 building flying cars. Though it sounds pretty cool, we're not  
8 doing it. If flying cars are made, if Google makes them, I  
9 will make sure that our 50 million or so customers at the time  
10 can push a button and get a flying car.

11 But that was it. And then, of course, just saying, "Hey,  
12 look, maybe we can partner." And that was just our general  
13 theme.

14 **Q.** And did you and Mr. Page have any discussion about  
15 self-driving cars in addition to flying cars?

16 **A.** Look, again, I tried to broach the subject of a  
17 partnership. And he was -- you know, he again was just upset  
18 with us. And he had -- you know, he was upset that we were  
19 taking all his people. And he kept saying, You're taking our  
20 people. You're taking our IP.

21 And sort of -- it was confusing because I kept telling  
22 him, We are recruiting lots of your people. I think people can  
23 work where they want to work, but your people are not your IP.

24 And I'm like, If you have an issue on IP, like we have  
25 very -- we feel like we have very clean processes to make sure

1 nobody who we hire that comes from your company, they're not  
2 bringing stuff over. We're happy to open -- you know, open our  
3 facilitates up or, you know, have your people talk to my people  
4 to figure out -- so we can prove that that's the case.

5 **Q.** What, if anything, did Mr. Page say in that conversation  
6 in October of 2016, about Mr. Levandowski?

7 **A.** He didn't say anything about him.

8 **Q.** What, if anything, did Mr. Page say in that October 2016  
9 conversation about Google files?

10 **A.** He didn't say anything.

11 **Q.** What, if anything, did Mr. Page say in that October 2016  
12 conversation about Google's trade secrets?

13 **A.** Nothing.

14 **MS. DUNN:** Your Honor, I pass the witness.

15 **THE COURT:** Thank you.

16 And we now go back to the other side.

17 **MR. VERHOEVEN:** Just a couple of questions, Your  
18 Honor.

19 **REDIRECT EXAMINATION**

20 **BY MR. VERHOEVEN:**

21 **Q.** Mr. Kalanick, I think I read in the press that you've been  
22 playing a lot of video games lately. Is that true?

23 **A.** When I'm between gigs, I play iPhone games sometimes.

24 **Q.** You like playing video games?

25 **A.** Like -- iPhone games is my thing.

1       **Q.**     In the context of video games, you know what a cheat code  
2     is, don't you, sir?

3       **A.**     Yes, I do. Yes.

4       **Q.**     It's a code you can use so you don't have to actually do  
5     the game, but you can cheat and get to the next level. Isn't  
6     that true, sir?

7       **A.**     Well, I think -- yes, but those codes in those games are  
8     put there on purpose by the publisher of those games. And they  
9     want the game players to have those codes.

10      **Q.**     Well, if the game players can't do the work they're  
11     supposed to do, then they can go get the cheat code; isn't that  
12     true, sir?

13      **A.**     No, it's just part of the fun of the game. That's just a  
14     game.

15      **Q.**     Well, in any event, you agree that a cheat code allows you  
16     to skip ahead and not have to do the game and do the work to  
17     get from one level to the other; yes?

18      **A.**     No.

19                   **MR. VERHOEVEN:** Thank you. I have no further  
20     questions.

21                   **MS. DUNN:** No questions, Your Honor.

22                   **THE COURT:** All right. May this witness be excused,  
23     or does anyone want him on recall?

24                   **MR. VERHOEVEN:** We can excuse the witness, Your Honor.

25                   **MS. DUNN:** Yes, Your Honor. He can be excused.

1           **THE COURT:** All right. Mr. Kalanick, good news.  
2 You're free to go. You can go on vacation anywhere you want to  
3 go. You're not going to be called back, or at least they're  
4 releasing you from any subpoenas.

5 So please have a good day and good luck. Thank you.

6           **THE WITNESS:** Thank you.

7 (Witness excused.)

8           **THE COURT:** Next witness.

9           **MS. BAILY:** Waymo calls Nina Qi.

10          **THE COURT:** Ms. Baily, how do you spell that name?

11          **MS. BAILY:** Q-i.

12          **THE COURT:** Q-i. Thank you.

13          **THE CLERK:** Will the witness please approach the  
14 witness stand.

15          **THE COURT:** Good morning to you.

16          Stand somewhere over there, please, and take the oath to  
17 tell the truth.

18                         NINA QI,

19          called as a witness for the Plaintiff, having been duly sworn,  
20 testified as follows:

21          **THE COURT:** All right. Welcome. Have a seat up  
22 there.

23          **THE CLERK:** Please state your name for the Court, and  
24 spell your last name for the court reporter.

25          **THE WITNESS:** Sure. It's Nina Qi. Last name is

spelled Q-i.

**THE COURT:** All right. And you need to be about that close to the mic for it to catch your voice. About like that.

You ready?

**THE WITNESS:** Yes.

**THE COURT:** Go ahead, Counsel.

**MS. BAILY:** Your Honor, may I approach with a binder?

**THE COURT:** Please do.

**DIRECT EXAMINATION**

**BY MS. BAILY:**

**Q.** Ms. Qi, you used to work at Uber; correct?

A. Yes.

**Q.** You worked at Uber from September 2015 to July 2017; correct?

**A.** Yes, that's correct.

8. Your title was manager, corporate development; correct?

**A.** Yes, when I first started.

9. Did your title change after that?

**A.** Yes.

Q. You got a promotion?

**A.** I did.

**Q.** To what?

**A.** I became senior manager of corporate development.

Q. And during your time at Uber, you reported to Cameron Poetzscher: is that correct?

1     **A.** Yes, that's correct.

2     **Q.** And did he lead corporate development at Uber?

3     **A.** Yes.

4     **Q.** While you were at Uber, your responsibilities included  
5 working on mergers and acquisitions; right?

6     **A.** Yes, that was one of my responsibilities.

7     **Q.** And you were involved in Uber's acquisition of NewCo,  
8 which became Ottomotto, from start to finish; right?

9     **A.** Yes. That's correct.

10    **Q.** As part of that work, you were involved in determining the  
11 value of that deal to Uber; correct?

12    **A.** Yes.

13    **Q.** And you actually helped create an analysis to ultimately  
14 determine the value of the deal to Uber; right?

15    **A.** I created several analysis, but yes.

16    **Q.** Can you take a look in your binder at Exhibit 298, please.

17    **A.** Okay.

18    **Q.** That's an email you wrote; correct?

19    **A.** Yes. It looks like it.

20               **MS. BAILY:** I'd request Exhibit 298 be moved into  
21 evidence.

22               **MR. BRILLE:** No objection.

23               **THE COURT:** Thank you. Received in evidence.

24               (Trial Exhibit 298 received in evidence.)

25               (Document displayed.)

1 **BY MS. BAILY:**

2 **Q.** This is an email you sent to Mr. McClendon and  
3 Mr. Poetzscher, dated January 26, 2016. Do you see that?

4 **A.** Yes.

5 **Q.** The subject is "NewCo value." Do you see that?

6 **A.** Yes.

7 **Q.** And then it says there is an attachment,  
8 "NewCoReview\_01-15.16B.pptx." Do you see that?

9 **A.** Yes.

10 **Q.** Now, take a look at Exhibit 299 in your binder, please.

11 **A.** Yes.

12 **Q.** The attachment to that email; right?

13 **A.** Yes, I think so.

14 **MS. BAILY:** I'd ask that Exhibit 299 be moved into  
15 evidence.

16 **MR. BRILLE:** No objection.

17 **THE COURT:** Received.

18 (Trial Exhibit 299 received in evidence.)

19 **MS. BAILY:** Let's put it up, please.

20 (Document displayed.)

21 **BY MS. BAILY:**

22 **Q.** This presentation is from January 2016; correct?

23 **A.** Yes, it looks like it.

24 **Q.** There's a chart in this presentation with the heading  
25 "NewCo can shorten AV timeline by 1-2 years while de-risking

1 our current laser approach."

2 Do you see that?

3 **A.** Yes.

4 **Q.** Now, focused on the "NewCo can shorten AV timeline by 1-2  
5 years," that information was shared with you by Brian McClendon  
6 and John Bares; correct?

7 **A.** Yes, that's correct.

8 **Q.** And, at the time, John Bares was the head of self-driving  
9 at Uber; right?

10 **A.** Yes.

11 **Q.** And he had been having technical discussions with  
12 Mr. Levandowski related to the acquisition; right?

13 **A.** That, I'm not sure.

14 **Q.** Well, you know that Mr. Bares was having -- was meeting  
15 with Mr. Levandowski; right?

16 **A.** No, I don't know that.

17 **MS. BAILY:** Please play Ms. Qi, Volume 1, lines 43/11  
18 to 16.

19 **THE COURT:** Just while you're doing that, I'll remind  
20 the jury that these playbacks are under-oath testimony that  
21 you -- it counts just as much as testimony presented here in  
22 court. So remember that admonition I gave you earlier.

23 All right. Let's roll the tape.

24 (Video played.)

25

1 BY MS. BAILY

2 Q. Now, Brian McClendon was the other person who shared with  
3 you that NewCo can shorten the AV timeline by one to two years;  
4 right?

5 A. Could potentially shorten, yes.

6 Q. And Mr. McClendon was the vice president of engineering at  
7 the time; right?

8 A. Yes, I believe so.

9 Q. He was Mr. Bares' boss?

10 A. Yes, I believe so.

11 Q. And Brian McClendon also had technical discussions with  
12 Mr. Levandowski related to the acquisition; right?

13 A. To be honest, I'm not sure. I don't remember today.

14 Q. Well, you recall that Mr. McClendon was involved in the  
15 negotiations that lead to the Otto acquisition; right?

16 A. He was involved in the beginning, but then he stopped  
17 being involved.

18 Q. Well, for a period of time, he was actually the internal  
19 technical point of contact for your team, the team at Uber who  
20 was working on the acquisition; right?

21 A. Yes. He did serve as our internal technical person.

22 Q. So Mr. Bares and Mr. McClendon were involved in the deal  
23 on the technical side. And at least Mr. Bares talked to  
24 Mr. Levandowski, and then they shared with you NewCo can  
25 shorten the AV timeline by one to two years; right?

1     **A.**    I'm not exactly sure about the timing, but, yes, at one  
2 point John Bares and Brian McClendon told me that, if the deal  
3 worked out, there could be a potential acceleration by one to  
4 two years.

5     **Q.**    And that was in January of 2016; correct?

6     **A.**    Yes, it was around that time.

7     **Q.**    And this chart is some analysis you did related to that  
8 information; right?

9     **A.**    Yes.

10    **Q.**    And the chart says, the second heading there says, "PV of  
11 incremental EBIT contribution outweighs NewCo's equity  
12 compensation."

13           Do you see that?

14    **A.**    Yes.

15    **Q.**    And PV is present value; right?

16    **A.**    Yes. That's correct.

17    **Q.**    And EBIT is earnings before income and taxes; correct?

18    **A.**    Yes.

19    **Q.**    And what you're saying here is that the value of  
20 accelerating Uber's AV timeline by one to two years, that value  
21 is much greater than what Uber expected to have to pay for  
22 NewCo; correct?

23    **A.**    In the context of this analysis, yes, the value of the  
24 EBIT contribution would be greater than NewCo's compensation.

25    **Q.**    And looking at this chart, you actually have three

1 analyses that are depicted here; right?

2 **A.** Yes.

3 **Q.** And the first analysis --

4 **MS. BAILY:** If we could just bring up the first bar  
5 all the way on the left.

6 **BY MS. BAILY:**

7 **Q.** That analysis concludes that the value of accelerating  
8 development was \$836 million to \$1,690,000,000; right?

9 **A.** Yes. In this context, that's correct.

10 **Q.** So it says "836" on the bottom, but the values are in  
11 millions; right?

12 **A.** Yes. That's correct.

13 **Q.** And this analysis that we have here, that was based on an  
14 internal Uber model with baseline city coverage; right?

15 **A.** Yes, I did use an internal Uber model.

16 **Q.** And that internal model you used for this analysis had  
17 baseline city coverage; right?

18 **A.** In the version that I looked at, there was a scenario that  
19 was -- I don't know if it was titled "baseline city coverage,"  
20 but it was in that vein, yes.

21 **Q.** You created this chart; right?

22 **A.** I did.

23 **Q.** And the chart says "baseline city coverage" under your  
24 first model; right?

25 **A.** Yes.

1 Q. Now, the second analysis -- let's go to the second bar.

2 The second analysis you did concluded that the value of  
3 accelerating development was between \$1.585 billion and  
4 \$2.610 billion; right?

5 A. Yes.

6 Q. And that's based on the same internal Uber model; right?

7 A. Yes.

8 Q. But with optimistic city coverage; correct?

9 A. Again, I don't remember if the model called it optimistic  
10 or not; but, yes, I see that.

11 Q. And then the third valuation that you did, you used a  
12 different method called a multiples approach; right?

13 A. Yes.

14 Q. And that analysis resulted in a value of between  
15 \$765 million and \$3,923,000,000; correct?

16 A. Yes.

17 Q. Now, take a look in your binder at Exhibit 7304.

18 A. Okay.

19 Q. You prepared this spreadsheet in connection with your work  
20 on Uber's acquisition of NewCo; right?

21 A. Yes.

22 MS. BAILY: I'd ask that Exhibit 7304 be moved into  
23 evidence.

24 THE COURT: Any objection?

25 MR. BRILLE: No objection.

1           **THE COURT:** Thank you. Received in evidence.

2           (Trial Exhibit 7304 received in evidence.)

3           (Document displayed.)

4           **BY MS. BAILY:**

5           **Q.** Now, Exhibit 7304 is a series of Excel spreadsheets;  
6 right?

7           **A.** Yes.

8           **Q.** And this is essentially the work that you did that  
9 underlies the chart that we were looking at; right?

10          **A.** Yes, this is the backup to it.

11          **Q.** Backup.

12          So this backup shows, for example, how you got to your  
13 first analysis of 835 million to \$1.6 billion in the baseline  
14 case; right?

15          **A.** Yes, it has some of that.

16          **Q.** And the next Excel spreadsheet shows how you calculated  
17 the optimistic case; right?

18          **A.** Yes, it looks like it.

19          **Q.** And then the final spreadsheet shows how you valued the  
20 one to two years in accelerated development using the multiples  
21 approach; right?

22          **A.** Yes, that's correct.

23          **Q.** Now, in your email summarizing all of this -- so let's go  
24 back to Exhibit 298.

25          You say in the first paragraph -- again, this is the email

1 to your boss, Mr. Poetzscher, and then to Brian McClendon, who  
2 is vice president of engineering -- you tell them the numbers  
3 are "very compelling." Do you see that?

4 **A.** Yes.

5 **Q.** And you were referring to the numbers we just talked about  
6 in the chart and in the backup; right?

7 **A.** Yes.

8 **Q.** And they're very compelling because the benefit to Uber of  
9 acquiring NewCo, as measured by your analysis, was so much  
10 greater than what Uber thought it would have to pay to acquire  
11 it; right?

12 **A.** Yes, but only if assuming the deal worked out and they  
13 were actually able to deliver acceleration by one to two years.  
14 The numbers did look very good.

15 **Q.** And the people who told you about accelerate one to two  
16 years were executives on the technical side of the negotiation  
17 and the acquisition; right?

18 **A.** Yes.

19                   **MS. BAILY:** We can put that down. Thank you.

20 **BY MS. BAILY:**

21 **Q.** Now, when you were working on the negotiations that led to  
22 the Otto acquisition, you communicated with other people by  
23 text; is that right?

24 **A.** Yes. That's correct.

25 **Q.** You communicated with Mr. Levandowski by text; correct?

1     **A.** Yes.

2     **Q.** And the reason you communicated with Mr. Levandowski by  
3 text was because he told you to keep communication off email  
4 and to only use text or phone; correct?

5     **A.** Yes, that's correct.

6     **Q.** Then at some point Mr. Levandowski asked you to delete all  
7 of your texts with him; right?

8     **A.** Yes.

9     **Q.** And you deleted them; right?

10    **A.** Yes.

11    **Q.** So as far as you're concerned, all of your texts with  
12 Mr. Levandowski about the acquisition, they no longer exist;  
13 correct?

14    **A.** I don't know if they don't exist. At some point, I did  
15 delete some of the texts. But then, after that, we continued  
16 to have conversations, to which I did not delete those texts.

17    **Q.** You deleted your texts at some point after you had been  
18 having discussions with Mr. Levandowski about the acquisition;  
19 right?

20    **A.** I honestly don't remember what time frame, but at some  
21 point I did delete the texts, yes.

22    **Q.** So there were texts that were deleted; correct?

23    **A.** Yes.

24    **Q.** And Mr. Levandowski asked you to delete them; right?

25    **A.** Yes.

1   **Q.**   And you can't access any of those texts anymore; right?  
2   You deleted them?

3   **A.**   Me personally, no.

4                 **MS. BAILY:**   Thank you, Your Honor. I pass the  
5   witness.

6                 **THE COURT:**   Please remind the jury of who you are.

7                 **MR. BRILLE:**   I will do that, Your Honor. Thank you.

8                 Good morning, ladies and gentlemen. My name is Michael  
9   Brille. I represent Uber.

10                 CROSS-EXAMINATION

11                 **BY MR. BRILLE**

12   **Q.**   Good morning, Ms. Qi.

13   **A.**   Good morning.

14   **Q.**   I'd like to pull up again Trial Exhibit 299. It's one of  
15   the -- it's the charts you were asked about.

16   **A.**   Sure.

17   **Q.**   I'd like to start with that.

18                 (Document displayed.)

19   **Q.**   Do you see that?

20   **A.**   Yes.

21   **Q.**   Some basic questions about that slide, Ms. Qi.

22                 When you prepared that slide, to what extent, if any, were  
23   you trying to value any self-driving car technologies?

24   **A.**   I wasn't.

25   **Q.**   And to what extent, if any, were you trying to value any

1 LiDAR or laser technologies?

2 **A.** I wasn't.

3 **Q.** To what extent, if any, were you trying to value any  
4 parts, any of the little parts that go up to making a laser or  
5 LiDAR?

6 **A.** I wasn't.

7 **Q.** Can you explain to the jury, given your experience, what  
8 were you trying to do with this analysis?

9 **A.** Yeah, sure. So part of my role on this deal was to really  
10 figure out and help determine how much Uber would be willing to  
11 pay for the deal.

12 So as part of that, I did a lot of various analyses that  
13 really meant to serve as reference points to help drive the --  
14 or help guide the purchase price negotiations. So this was one  
15 of the analysis I worked on.

16 And in this case, I had assumed, assuming that the deal  
17 worked out and everything was great, what would it look like if  
18 Uber's revenue and profits -- what would it look like for  
19 Uber's revenue and profits if the AV acceleration and the  
20 acceleration of the technological development actually happened  
21 by one to two years. And this is kind of the work that I did  
22 for this.

23 **Q.** Ms. Qi, you didn't get any -- asked any questions about  
24 yourself. So just very quickly, could you tell the jury a  
25 little bit about yourself? Let's start with where you grew up.

1     **A.** Yeah, sure. So I was born in China and I came to the U.S.  
2 which I was six. My dad was getting a PhD at Penn State, and  
3 my mom and me joined him in state college.

4                 And then we spent a year in Jersey while my dad was  
5 finishing up his postdoc at Rutgers.

6                 And then, after that, we moved to a really small town in  
7 Western New York called Corning, New York, where I finished  
8 middle school and high school.

9     **Q.** And how did you make your way to California?

10    **A.** Well, so I applied to Stanford University for undergrad.  
11 You know, coming from a small town, I really wanted to go  
12 somewhere different.

13                 I had visited Stanford at -- after my junior year and just  
14 kind of fell in love with the campus, and the weather was  
15 amazing, too, as well. And luckily I was able to get in.

16                 And that's kind of how I eventually made my way out to  
17 California.

18     **Q.** And what did you major in at Stanford?

19    **A.** So I majored in economics and psychology. I was always  
20 really interested in how people made decisions and how  
21 environment, culture, society influenced them. And I always  
22 thought that econ and psych were the perfect intersection of  
23 the two.

24    **Q.** Now, you said you joined Uber, I believe, in  
25 September 2015; is that right?

1     **A.** Yes, that's correct.

2     **Q.** And how long had you actually worked at Uber before you  
3     started working on the Ottomotto transaction?

4     **A.** Maybe a couple weeks.

5     **Q.** And to that point in your career what experience, if any,  
6     did you have, if any, with self-driving car technologies at  
7     all?

8     **A.** None.

9     **Q.** And can you -- at a high level, could you explain what  
10    your role was on the transaction team?

11    **A.** Yeah, sure. I helped Cam, which is my boss, to help  
12    negotiate the deal and project manage the deal from start to  
13    finish.

14    **Q.** Now, do you still work at Uber?

15    **A.** No, I don't.

16    **Q.** And when did you leave?

17    **A.** I left in July of 2017.

18    **Q.** So let's go back now to that slide you were shown during  
19    your direct examination, Trial Exhibit 299.

20    **A.** Sure.

21    **Q.** And my first question's a broad one. Could you explain to  
22    the jury or describe for them the difficulty of an analysis  
23    like this.

24    **A.** Yeah. It was extremely difficult. Usually when you do  
25    these type of valuations, you have a company that's been around

1 for awhile to have some historical financials, or at the very  
2 least, it's an industry that's been around for awhile, so you  
3 kind of know that historical data can help you project what the  
4 future could look like.

5 But in this case, this technology was brand new and the  
6 company didn't have any revenues or profits. So it was really  
7 difficult to figure out what it could look like in the future,  
8 and I had to make a lot of assumptions.

9 Like, for instance, I had to estimate, you know, the  
10 number of cities we were going to launch, when we were going to  
11 launch the cities, the number of fully autonomous vehicle trips  
12 that we were going to take, how much we were going to charge,  
13 how -- how it would cost Uber to operate this.

14 At the end of the day, I really did give it my best shot,  
15 but it really was just an educated guess.

16 **Q.** And Ms. Qi, was this the only way you looked at the  
17 analysis in terms of the deal?

18 **A.** No, it wasn't.

19 **Q.** And can you explain to the jury what some of the other  
20 ways the analysis was looked at?

21 **A.** Yeah, sure. So Uber had acquired another company called  
22 Carnegie Robotics, and that was a formation of our self-driving  
23 unit. So I looked at the purchase price for that.

24 I also looked at -- in the market, there were a couple  
25 other laser startups that were fundraising for money, and I

1 looked at what investors were willing to pay for those  
2 companies. And then ultimately we asked Anthony how much he  
3 wanted and really used that as the main determining factor.

4 **Q.** Ms. Qi, I'd like to turn your attention back to trial  
5 Exhibit 7304. This is another document you were shown in your  
6 direct examination.

7 **A.** Okay.

8 (Document displayed.)

9 **Q.** And I believe you testified that this was the spreadsheet  
10 that you used to create the slide that is Trial Exhibit 299?

11 **A.** Yes. This is a backup.

12 **Q.** Okay. Where did the model come from?

13 **A.** So I used a lot of the numbers from the Project Rubicon  
14 model.

15 **Q.** And what was that?

16 **A.** To my understanding, it was at that time Uber's business  
17 and go-to-market strategy for self-driving vehicles.

18 **Q.** Had you used the Rubicon model before?

19 **A.** No. I didn't even know it existed.

20 **Q.** Had you -- did you use it again after you did this  
21 analysis?

22 **A.** No.

23 **Q.** Do you have any understanding of what happened to the  
24 Rubicon model going forward after you used it?

25 **MS. BAILY:** Objection. Hearsay.

1           **THE COURT:** Overruled.

2           Please answer.

3           **THE WITNESS:** So my understanding was that, over time,  
4 this model was no longer used.

5           **BY MR. BRILLE**

6           **Q.** So I'd like to direct your attention now, if I could, to  
7 some of the entries on this model.

8           **A.** Sure.

9           **Q.** And do you see that there is a section here, it's  
10 underneath the first section. It says "One Year Accelerated  
11 Technological Capabilities." Do you see that?

12          **A.** Yes.

13          **Q.** And underneath there you see there is a line that says  
14 "Total AV Vehicle Trips." Do you see that?

15          **A.** Yes.

16          **Q.** And can you explain to the jury what information is  
17 reflected in that line there?

18          **A.** Yeah. This is the number of autonomous vehicle trips that  
19 is without a safety driver that Uber was going to operate per  
20 year.

21          **Q.** And at the time you did this analysis, what did you  
22 project for 2016?

23          **A.** 255.

24          **Q.** And you did this analysis in January 2016?

25          **A.** Yes, that's correct.

1   **Q.**   And how many self-driving trips did Uber take in 2016  
2   without a safety driver?

3   **A.**   Based on my knowledge, none.

4   **Q.**   And, again, if you look, what did your analysis project  
5   for 2017?

6   **A.**   Approximately 295,000.

7   **Q.**   And at the time you left Uber in July of 2017, how many  
8   self-driving vehicle trips had Uber taken without a safety  
9   driver?

10   **A.**   Based on my knowledge, none.

11   **Q.**   And finally, what did you project for 2018, which is this  
12   year?

13   **A.**   Looks like it's around 33 million.

14   **Q.**   So, Ms. Qi, what is -- given what you just described, what  
15   is -- what does that information, in light of what actually  
16   happened, tell you about your analysis?

17   **A.**   I think it really just reiterated how difficult it was to  
18   do an analysis; that we were trying to project what the future  
19   could look like without any historical data or financials. And  
20   ultimately, you know, I guess just our estimates just didn't  
21   pan out.

22   **Q.**   Now, did you show -- did you show the slide that is at 299  
23   to anyone at Uber?

24   **A.**   I did.

25   **Q.**   And who did you show it to?

1     **A.** I showed it to Cam and Bryan.

2     **Q.** And for what purpose?

3     **A.** For them to review, because I wanted to get their input.

4     **Q.** And did you ever review the slide with Mr. Kalanick?

5     **A.** No, I did not.

6     **Q.** Or the Uber Board of Directors?

7     **A.** No.

8     **Q.** Do you know of anyone at Uber who relied on that analysis  
9 to make decisions about the Ottomotto transaction?

10    **A.** Not that I'm aware of.

11    **Q.** Now, Ms. Qi, you understand that in this case Waymo is  
12 accusing Uber of stealing certain of its trade secrets. Do you  
13 understand that?

14    **A.** Yes.

15    **Q.** At the time you did this analysis, were you aware of any  
16 Google trade secrets for self-driving cars?

17    **A.** No, I wasn't.

18    **Q.** Were you trying to value any of the alleged trade secrets  
19 in this case?

20    **A.** Definitely not.

21    **Q.** Do you know what any of those alleged trade secrets are?

22    **A.** No.

23    **Q.** Okay. Just one final. You were asked at the end of your  
24 direct examination about a request Mr. Levandowski made of you  
25 to delete texts. Do you recall that?

1     **A.** Yes.

2     **Q.** And you said that you -- well, you honored his request?

3     **A.** Yes.

4     **Q.** Why did you do that?

5     **A.** Well, M&A deals usually are very confidential. There's  
6     always a risk that it could leak out and then someone else  
7     could come in and the deal could completely just get blown up.

8                 So in that context, if Anthony felt like deleting those  
9     texts would mean that the deal would remain private and would  
10    not get leaked out, I was happy to honor that. We've done a  
11    lot of different things to ensure privacy of M&A deals. So  
12    this, to me, did not seem to be, you know, out of the ordinary  
13    at all.

14                 **MR. BRILLE:** Pass the witness, Your Honor.

15                 **THE COURT:** All right. Ms. Baily.

16                 REDIRECT EXAMINATION

17     **BY MS. BAILY**

18     **Q.** Ms. Qi, you were asked whether you did any work to value  
19     LiDAR or other pieces of autonomous vehicle technology. Do you  
20     recall that?

21     **A.** Yes.

22     **Q.** And you don't have any degrees in any kind of technical  
23     field; right?

24     **A.** No.

25     **Q.** So you were relying on others to give you the information

1 you needed to perform your analysis; right?

2 **A.** Yes.

3 **Q.** And one of those people was the vice president of  
4 engineering at Uber, correct, Mr. McClendon?

5 **A.** Yes.

6 **Q.** Now, you also testified that you didn't have much  
7 experience with the Rubicon model; right?

8 **A.** Yes.

9 **MS. BAILY:** If you could bring up, Mr. Fisher, Exhibit  
10 98?

11 (Document displayed.)

12 **BY MS. BAILY**

13 **Q.** Now, in your second paragraph, it says:

14 "I worked on this with Jamie and Justin."

15 Do you see that?

16 **A.** Yes.

17 **Q.** Who are Jamie and Justin?

18 **A.** At that time they were part of ATG, the self-driving car  
19 unit, and they focused, I believe, on strategy.

20 **Q.** And they worked on the Rubicon model; right?

21 **A.** I don't know for a fact, but they did give me the model.

22 **Q.** And you worked with Jamie and Justin on your analysis;  
23 right?

24 **A.** No, I didn't. The deal was confidential, so I couldn't  
25 tell them that much, only that I needed the model and for them

1 to walk me through the model.

2 **Q.** Well, in your email to your boss and to the vice president  
3 of engineering, you said:

4 "I worked on this," attaching your email, "with Jamie and  
5 Justin." Right?

6 **A.** Yes.

7 **Q.** And you also say:

8 "I took the latest Rubicon model which shows a  
9 conservative case for number of AV trips."

10 And then you describe how you altered them to assess, in  
11 your analysis, the value of NewCo; right?

12 **A.** Yes, that's correct.

13 **Q.** And let's just look at the bottom of the chart we were  
14 looking at before, Exhibit 299.

15 (Document displayed.)

16 **Q.** If you look at the general assumptions, you say:

17 "Based on Rubicon model's most conservative case."

18 Right?

19 **A.** Yes.

20 **Q.** And then you say years that you focused on; right?

21 **A.** Yes.

22 **Q.** And then you actually use a discount rate to get the  
23 present value; right?

24 **A.** Yes.

25 **Q.** And the discount rate reflects risk, because you're

1 projecting the future; right? So that value takes into account  
2 some uncertainty with future projections; right?

3 **A.** I don't know that's necessarily the case, but it does take  
4 into account the fact that money today is worth more than money  
5 tomorrow because you have it.

6 **Q.** But the values that you were shown in the Excel  
7 spreadsheet that you looked at, ultimately those values were  
8 discounted to reflect the present value in 2016; right?

9 **A.** Yes, that's correct.

10 **Q.** Thank you.

11                   **MR. BRILLE:** Just one question, Your Honor.

12                   RECROSS-EXAMINATION

13 **BY MR. BRILLE**

14 **Q.** Ms. Qi, the discount rate at -- can you explain to the  
15 jury how that bears upon your analysis?

16 **A.** Yeah. So usually when you're doing projections like this,  
17 you are projecting out from today to 35 years in the future.  
18 And the assumption is that if you have money today, it's worth  
19 more than if you have money tomorrow; right? So what you need  
20 to do is bring all those projections from the future into  
21 today's, a dollar amount. So that's how the discount rate is  
22 used.

23                   The number reflects how risky you think that is, so  
24 potentially how risky you -- you can actually achieve those  
25 numbers.

1       But, again, it's really just bringing the value from the  
2 future to the present.

3           **MR. BRILLE:** No further questions, Your Honor.

4           **THE COURT:** All right. May we excuse this witness?

5           **MS. BAILY:** From our perspective, yes.

6           **MR. BRILLE:** Yes, Your Honor.

7           **THE COURT:** Okay. Ms. Qi, thank you. You're free to  
8 go. Have a good day.

9           **THE WITNESS:** Thank you.

10          (Witness excused.)

11           **THE COURT:** Next witness.

12           **MR. PERLSON:** Good morning, Your Honor. Waymo calls  
13 Lior Ron.

14           **THE COURT:** Okay.

15           **THE CLERK:** Will the witness please approach the  
16 witness stand.

17           **THE COURT:** Welcome. Please stand somewhere in there  
18 and raise your right hand. The Clerk will swear you in.

19                           LIOR RON,

20 called as a witness for the Plaintiff, having been duly sworn,  
21 testified as follows:

22           **THE WITNESS:** I do.

23           **THE COURT:** All right. Thank you. Have a seat.  
24 Welcome.

25           **THE WITNESS:** Thank you.

**THE COURT:** You see how my mic moves all around?

Yours does too. It needs to be close to your voice so everyone in the courtroom can hear you.

**THE WITNESS:** Okay.

**THE COURT:** So please state your full name.

**THE WITNESS:** Lior Ron. First name L-I-O-R. Last name R-O-N.

**THE COURT:** All right. Thank you.

And, counsel, reintroduce yourself to the jury, please.

**MR. PERLSON:** Sure, Your Honor. David Perlson,  
for Waymo.

**THE COURT:** All right.

**DIRECT EXAMINATION**

**BY MR. PERLSON**

Q. Good morning, Mr. Ron.

Mr. Ron, you currently work at Uber; is that correct?

**A.** Yes, I do.

**Q.** And before you worked at Uber, like Mr. Levandowski, you used to work at Google; right?

A. Yes, I did.

**Q.** And before joining Uber, you founded 280 Systems; is that correct?

A. Yes, I have.

9. 280 Systems became Ottomotto?

**A.** Yes, that's correct.

1     **Q.** Now, you and Mr. Levandowski were the two largest  
2     shareholders of Ottomotto; correct?

3     **A.** Yes, that's correct.

4     **Q.** Now, but unlike Mr. Levandowski, you did not work on  
5     autonomous driving technology while you were at Google;  
6     correct?

7     **A.** That's correct.

8     **Q.** In fact, you've never done any work on autonomous driving  
9     at any company; right?

10    **A.** Yes.

11    **Q.** And even at Otto, you didn't do any engineering work  
12    relating to autonomous driving technology?

13    **A.** No, I have not.

14    **Q.** You've never developed LiDAR?

15    **A.** No, I did not.

16    **Q.** And now that you're at Uber, you still don't do any  
17    engineering work on autonomous driving; right?

18    **A.** That's correct.

19    **Q.** In fact, you haven't touched anything engineering related  
20    in 10 to 15 years; fair?

21    **A.** That's fair, yes.

22    **Q.** Okay. Well, let's discuss a little bit of the history of  
23    Ottomotto.

24                  Now, you and Mr. Levandowski first discussed forming  
25    Ottomotto in the second half of 2015?

1     **A.** Yes, that's correct.

2     **Q.** And you also began meeting with Uber in the second half of  
3 2015; right?

4     **A.** Yes, that's correct.

5     **Q.** And this was when you were both still at Google?

6     **A.** Uh-huh.

7     **Q.** And in November 2015, you set up a Slack site to use as a  
8 channel to communicate with Mr. Levandowski; right?

9     **A.** Yes, I have.

10    **Q.** And if you could turn to 5413 in your binder that's in  
11 front of you, TX.

12    **A.** I'm sorry. 51...

13    **Q.** 5413.

14    **A.** Yes.

15    **Q.** Okay. And this is an invitation to Mr. Levandowski from  
16 you to join the 280 Slack site; correct?

17    **A.** Yes, that's correct.

18    **Q.** Okay.

19                   **MR. PERLSON:** Can we -- Your Honor, I'd move to admit  
20 5413.

21                   **MR. CARMODY:** No objection, Your Honor.

22                   **THE COURT:** Received.

23                   (Trial Exhibit 5413 received in evidence.)

24                   **MR. PERLSON:** Please put it up on the screen.

25                   (Document displayed.)

1           **MR. PERLSON:** Thank you.

2       **BY MR. PERLSON**

3       **Q.** Now, this Slack site was separate from your and  
4 Mr. Levandowski's Google emails that you both had because  
5 you -- when you worked there?

6       **A.** Yes, that's correct.

7       **Q.** And so you could communicate with Mr. Levandowski using  
8 the Slack site without Google knowing about it; right?

9       **A.** Yes, that's correct.

10      **Q.** I'd like you to turn to Exhibit 5213.

11           (Witness complied.)

12      **Q.** Do you recognize this as a text message from  
13 Mr. Levandowski to yourself?

14           (Brief pause.)

15      **A.** Yes.

16      **Q.** Yes?

17      **A.** I do.

18           **MR. PERLSON:** And, Your Honor, I would like to admit  
19 TX-5213.

20           **MR. CARMODY:** Your Honor, I'm going to object. It's  
21 old rule stuff. It's not an admission.

22           **THE COURT:** All right. May I see the exhibit, 5213?

23           **MR. PERLSON:** Your Honor, I don't think it's hearsay.  
24 It's a -- it's a message from Levandowski to Mr. Ron telling  
25 him to do something. That's not hearsay.

1                   **MR. CARMODY:** Short response, Your Honor. It's being  
2 used for its truth. It's an old Google time document. It's  
3 not an admission. Ottomotto was not yet formed. This was back  
4 when they were at Google.

5                   **THE COURT:** Yes, I understand your point, but the  
6 contents of this are in the nature of a transaction, not in the  
7 nature of repeating some fact like the light at the traffic  
8 signal was red. This is a proposal to do something, and  
9 that -- so it's like when you have a contract case. You have  
10 to prove up the contract like, "I offer to buy your car for a  
11 hundred dollars." Then the other side says, "Accepted." And  
12 that's not hearsay. That's a transaction.

13                  So the objection is overruled. This is not hearsay. 5213  
14 is in evidence.

15                  (Trial Exhibit 5213 received in evidence.)

16                  **BY MR. PERLSON**

17                  **Q.** So, again, this is a message from Mr. Levandowski to  
18 yourself on December 18, 2015; correct?

19                  **A.** Yes, that is correct.

20                  **Q.** And he tells you "Let's do Slack and iMessage only." And  
21 there's a little wink there; right?

22                  **A.** Yes, I see the wink.

23                  **Q.** And this is while you were both working at Google; right?

24                  **A.** Yes, that's correct.

25                  **Q.** And at the same time that you were discussing the

1 formation of Ottomotto and meeting with Uber; right?

2 **A.** Yes, that's correct.

3 **Q.** Okay. If you could turn to 4296, please?

4 Now, while -- while you were -- but before I ask you about  
5 that, while you were discussing the formation of Ottomotto and  
6 meeting with Uber, you and Levandowski, you reminded each other  
7 to delete text messages; true?

8 **A.** No, that's not correct.

9 **Q.** Okay. Well, let me look at -- if I could direct you to  
10 Exhibit 4296.

11 **MR. PERLSON:** Your Honor, I'd like to admit this.

12 **MR. CARMODY:** No objection.

13 **THE COURT:** Received.

14 (Trial Exhibit 4296 received in evidence.)

15 **MR. PERLSON:** Please put it up.

16 (Document displayed.)

17 **BY MR. PERLSON**

18 **Q.** This is a message from Mr. Levandowski to yourself. It's  
19 an iMessage. Do you see that?

20 **A.** Yes, I do.

21 **Q.** That's basically a text message; right?

22 **A.** That's correct.

23 **Q.** Okay. And Mr. Levandowski is telling you:

24 "Please delete after use."

25 Do you see that?

1      **A.** Yes, I do.

2      **Q.** Now, I'd like to turn you to TX-4297, please.

3               (Witness complied.)

4      **Q.** Do you recognize this as an iMessage from yourself to  
5 Mr. Levandowski?

6      **A.** Yes, I do.

7               **MR. PERLSON:** I would like to move this into evidence,  
8 please.

9               **MR. CARMODY:** No objection.

10          **THE COURT:** Received.

11               (Trial Exhibit 4297 received in evidence)

12               (Document displayed)

13          **BY MR. PERLSON**

14      **Q.** Mr. Ron, in this evidence, you respond:

15               "Deleted. Good call."

16               Do you see that?

17      **A.** Yes, I do.

18      **Q.** Now, in November 2015 you registered the domain 280  
19 Systems; correct?

20      **A.** Yes, I did.

21      **Q.** If you could turn to TX-4316, please.

22               (Witness complied.)

23      **Q.** Do you recognize this as an email from yourself to  
24 Mr. Levandowski with the formation of 280systems.com?

25      **A.** The registration of the 280 Systems domain, yes.

1                   **MR. PERLSON:** Your Honor, I ask that 4316 be admitted  
2 into evidence.

3                   **MR. CARMODY:** No objection, Your Honor.

4                   **THE COURT:** Thank you. 4316.

5 (Trial Exhibit 4316 received in evidence.)

6 (Document displayed.)

7 **BY MR. PERLSON**

8                   **Q.** And if you'd look at this email, it's dated November 16,  
9 2015; right?

10                  **A.** Yes, it is.

11                  **Q.** You're still both working at Google; right?

12                  **A.** That's correct.

13                  **Q.** Well, let's -- in December of 2015, you were already  
14 interviewing lawyers on behalf of 280 Systems; right?

15                  **A.** That's correct.

16                  **Q.** Let me point you to Exhibit 5146, please, in your binder.

17 (Witness complied.)

18                  **Q.** Do you recognize this as an iMessage or text message from  
19 yourself to Mr. Levandowski -- I'm sorry, from Mr. Levandowski  
20 to you?

21                  **A.** Yes, I do.

22                   **MR. PERLSON:** I ask that 5146 be admitted, please.

23                   **MR. CARMODY:** No objection.

24                   **THE COURT:** Received.

25 (Trial Exhibit 5146 received in evidence)

1 BY MR. PERLSON

2 Q. In this message Mr. Levandowski tells you:

3 "From Cam, just double-checked with Legal and  
4 Orrick works for Lyft. So we wouldn't be able to  
5 share any info with them and would really prefer you  
6 choose O'Melveny or Goodwin Procter."

7 Do you see that?

8 A. Yes, I do.

9 Q. And "Cam," that refers to Mr. Poetzscher who works at  
10 Uber?

11 A. That's correct.

12 Q. So Mr. Levandowski is relaying the fact that  
13 Mr. Poetzscher of Uber has certain preferences of which law  
14 firms Ottomotto should hire; right?

15 A. That's correct. I think we were also talking with Lyft,  
16 so they were just concerned that we wouldn't talk with  
17 attorneys that were working for Lyft as well, which we have.  
18 We were talking with attorneys working for Lyft as well.

19 Q. Okay. My question was: Uber was recommending lawyers to  
20 Ottomotto that they would use in the transaction; true?

21 Yes?

22 A. Yes.

23 Q. All right. If you could turn to 5413, please?

24 A. I'm sorry. 5...?

25 Q. 5413 -- I'm sorry, 4314. Didn't mean to trip you up

1 there.

2 (Witness complied.)

3 **Q.** You see this as an email that you wrote?

4 **A.** Yes, it's an email that I helped draft.

5 **Q.** Okay.

6 **MR. PERLSON:** We'd ask that 4314 be admitted into  
7 evidence.

8 **MR. CARMODY:** No objection.

9 **THE COURT:** All right. Received.

10 (Trial Exhibit 4314 received in evidence)

11 (Document displayed)

12 **BY MR. PERLSON**

13 **Q.** Now, you wrote this email for Mr. Levandowski to send to  
14 Larry Page at Google; right?

15 **A.** Yes. I think we both drafted it together.

16 **Q.** Well, this was something that you were helping  
17 Mr. Levandowski draft; right?

18 **A.** Correct.

19 **Q.** And Mr. Levandowski is the CEO of Google?

20 **A.** No, that's not correct.

21 **Q.** At the time he was?

22 **A.** No, Mr. Levandowski was not the CEO of Google.

23 **Q.** Oh, I'm sorry. That is absolutely true.

24 I think I already established it, so I'll move on. But,  
25 anyways, on behalf of Mr. Levandowski, you wrote:

1                   "Uber and others are ramping up quickly and are  
2 only two years behind at this point."

3                   Do you see that?

4           **A.** Yes, I can see that.

5           **Q.** But you didn't work at the autonomous driving field at  
6 Google; right?

7           **A.** That's correct.

8           **Q.** And then you also wrote in this document:

9                   "The team is not moving fast enough due to a  
10 combination of risk aversion and lack of urgency. We  
11 need to move faster."

12                  Do you see that?

13           **A.** Yes, I do.

14           **Q.** You had no basis to say anything about that because you  
15 didn't work on the team; right?

16           **A.** Correct. As I said, we drafted that together.

17           **Q.** Okay. But you weren't even -- and then, on behalf of  
18 Mr. Levandowski, you wrote:

19                   "We have the team Lisa, now we need Mac."

20                  Do you see that?

21           **A.** Yes, I do.

22           **Q.** Now, Mr. Levandowski eventually sent an email to Mr. Page  
23 regarding the state of Project Chauffeur; right?

24           **A.** I -- I don't know.

25           **Q.** Okay. Well, if we could go to TX-1898, which is already

1 admitted.

2 (Document displayed.)

3 Q. Now, you see it's an email from Mr. Levandowski to Larry  
4 Page. Do you see that?

5 A. Yes, I can see that.

6 Q. And the date of this document is January 9th, 2016?

7 A. Yes, I can see that.

8 Q. And that's just eight days after the draft email that we  
9 looked earlier at, TX-4314?

10 A. Yes, it is.

11 Q. And if you look at the title of it, it says, "Team Mac  
12 urgently needed."

13 A. Yes, I can see that.

14 Q. And that was the language that was in your January 1st  
15 email, too, right, regarding Team Mac?

16 A. Yes, that is.

17 Q. Let me point you to TX-5822, please.

18 (Witness complied.)

19 Q. Do you recognize this as a text message between yourself  
20 and Mr. Levandowski?

21 A. Yes.

22 MR. PERLSON: I ask that 5822 be admitted, please.

23 MR. CARMODY: That's fine.

24 THE COURT: Thank you. In.

25 (Trial Exhibit 5822 received in evidence.)

1           **MR. PERLSON:** Please put it on the screen.

2           (Document displayed.)

3           **BY MR. PERLSON**

4           **Q.** Mr. Levandowski writes:

5                 "Hey, can you write me an email I should send to  
6                 Bryan of how he should announce that he is replacing  
7                 me on the laser team."

8                 Do you see that?

9           **A.** Yes, I can see that.

10          **Q.** So he's asking you to write an email for him?

11          **A.** Yes, he did.

12          **Q.** And Bryan, that refers to Bryan Salesky?

13          **A.** Yes, I think so. His manager, I believe.

14          **Q.** And he was the manager at Project Chauffeur at the time?

15          **A.** He was a manager. I'm not sure what -- exactly what was  
16           his role.

17          **Q.** But he was working on Project Chauffeur?

18          **A.** Yes.

19          **Q.** And the next sentence says:

20                 "He asked me to do that, and I think it's a great  
21                 opportunity to set up evidence that I was pushed out."

22                 See that?

23          **A.** Yes, I can see that.

24          **Q.** So Mr. Levandowski said he wanted to set up evidence to  
25           make it look like he was pushed out of Project Chauffeur.

1 That's what he said?

2 **A.** That's what he wrote in this text message.

3 **Q.** And when he sent you this message, Levandowski was still  
4 at Google; right?

5 **A.** Correct. He was still at Google, and I believe the team  
6 did -- basically about to replace him, or that's what he shared  
7 with me, that they had already hired his replacement  
8 essentially.

9 **Q.** Okay. But he was still working at Google at that time?

10 **A.** Correct.

11 **Q.** Hadn't left yet?

12 **A.** Yes.

13 **Q.** Now, you actually resigned from Google the very next day,  
14 on January 13th; right?

15 **A.** Yes. That's correct.

16 **Q.** And when you left Google, you didn't give them, like, an  
17 advance two weeks' notice; right?

18 **A.** No, I did not.

19 **Q.** You said, "I'm leaving," and you left?

20 **A.** Yes. I didn't have any managerial duties at the time.

21 **Q.** Okay. But, again, you just left. No advance notice;  
22 right?

23 **A.** Correct.

24 **Q.** And you formed Ottomotto two days later, January 15th?

25 **A.** Yes, I believe that's correct.

1 Q. Well, let's look at TX-5077, please.

2 (Witness complied.)

3 MR. CARMODY: No objection.

4 MR. PERLSON: I appreciate that.

5 Could we have it admitted, 5077? I had a preemptive "no  
6 objection."

7 MR. CARMODY: No objection. It's fine.

8 THE COURT: Okay. Thank you. In.

9 (Trial Exhibit 5077 received in evidence.)

10 (Document displayed.)

11 BY MR. PERLSON

12 Q. Is this the document indicating the formation of Ottomotto  
13 on January 15th, 2016?

14 A. I think so, yes.

15 Q. When Ottomotto was formed, it was being run out of  
16 Mr. Levandowski's house; right?

17 A. No, that's not correct.

18 Q. Well, it was being run out of his house at the beginning  
19 of Ottomotto, early in Ottomotto?

20 A. Later on, yes.

21 Q. Okay. But in the early portions of Ottomotto's history,  
22 it's being run out of his house; right?

23 A. Not initially, but later on, yes.

24 Q. But, again, that's not what I'm asking.

25 In the early portion of its history, Ottomotto was being

1 run out of Mr. Levandowski's house?

2 **A.** Yes.

3 **Q.** Now, even after you formed Ottomotto and you both had left  
4 Google, you and Mr. Levandowski still reminded each other to  
5 delete text messages; true?

6 **A.** No, that's not correct.

7 **Q.** Okay. Well, let's -- if you could look at TX-5467,  
8 please.

9 **A.** I'm sorry. Can you repeat the number?

10 **Q.** 5467.

11 (Witness complied.)

12 **Q.** You recognize this as a text message that Mr. Levandowski  
13 sent you on March 9th, 2016?

14 **A.** Yes.

15 **MR. PERLSON:** I'd like to move 5467 into evidence,  
16 please.

17 **MR. CARMODY:** That's fine.

18 **THE COURT:** Thank you. In evidence.

19 (Trial Exhibit 5467 received in evidence.)

20 (Document displayed.)

21 **BY MR. PERLSON**

22 **Q.** In this message, Mr. Levandowski reminds you to:

23 "Make sure you delete all the messages tonight on  
24 both your PC and iPhone."

25 Do you see that?

1     **A.** Yes, I can.

2                 And he did remind me from time to time. You were asking  
3 me if we were reminding each other, which is not true. He  
4 reminded me from time to time, and I didn't think much of it.

5     **Q.** And you followed this direction; right?

6     **A.** Sometimes; sometimes not.

7     **Q.** But Mr. Levandowski asked you to do it?

8     **A.** From time to time, yes.

9     **Q.** Just like in this email?

10    **A.** Correct.

11    **Q.** And when Uber acquired Ottomotto, Ottomotto issued new  
12 laptops to everyone as soon as they joined; right?

13    **A.** That is correct. That was our policy.

14    **Q.** And that included Mr. Levandowski?

15    **A.** That is correct.

16    **Q.** But Ottomotto never implemented a specific policy to  
17 prevent Mr. Levandowski from bringing his personal laptop to  
18 work at Otto, did it?

19    **A.** No, I don't believe so. We trusted the employees.

20    **Q.** And you're not aware of any specific Uber policies that  
21 prevented Levandowski from bringing his personal laptop to Uber  
22 either; right?

23    **A.** No, I'm not aware of Uber's policies.

24    **Q.** Okay. I'd like to direct you to TX-903, please.

25    **A.** I'm sorry. 903?

1   **Q.** TX-903.

2                             (Brief pause.)

3   **Q.** Is this a document that you received from Mr. Levandowski  
4 on November 2nd, 2016?

5   **A.** I'm sorry. Can you repeat the number? 903?

6   **Q.** Yeah.

7                             **THE COURT:** Counsel, maybe you've got to go up there  
8 and help him find it.

9                             **MR. PERLSON:** Okay.

10                          **THE WITNESS:** I haven't received 903.

11                          **BY MR. PERLSON**

12   **Q.** Well, it's 0903 in your binder.

13   **A.** Okay.

14   **Q.** Do you recognize this as a document that you received from  
15 Mr. Levandowski on November 2nd, 2016?

16   **A.** I don't recall this specific email.

17   **Q.** Well, if you could turn to 523 in your set. 523, please.

18   **A.** Yes.

19   **Q.** And go to page 26, please.

20                             (Witness complied.)

21   **Q.** If you look, there is an entry 549 on that page.

22   **A.** Yes, I can see that.

23   **Q.** And it refers to UBER75555?

24   **A.** Yes, I can see that.

25   **Q.** Okay. And it's a November 2nd email -- or November 2nd

1 document. Do you see that?

2 **A.** Yes.

3 **Q.** Okay. Does that refresh your recollection at all?

4 **A.** No, I think this was an email that was sent for a very  
5 broad distribution list. So I might have been one of the  
6 recipients, but I don't remember specifically reading through  
7 it.

8                   **MR. PERLSON:** Your Honor, I'd like to introduce 903.

9                   **MR. CARMODY:** We object, Your Honor. There's no  
10 foundation whatsoever.

11                  **THE COURT:** So far, sustained. Not in evidence.

12                 **BY MR. PERLSON**

13 **Q.** Now, Mr. Ron, when you were discussing partnering with  
14 Uber, you discussed that Ottomotto could accelerate Uber in the  
15 self-driving market; is that true?

16 **A.** I don't remember that specific language.

17 **Q.** Well, is it true?

18 **A.** It might. I don't remember the specific language.

19 **Q.** Okay.

20                  **MR. PERLSON:** Can we play from Mr. Ron's October 2nd  
21 deposition 59/3 to 9.

22                  (Videotape played in open court, not reported.)

23                 **BY MR. PERLSON**

24 **Q.** And it was your view that Ottomotto could accelerate Uber  
25 in the self-driving market; right?

1     **A.** I think that was one of the potentials, yes.

2     **Q.** Okay. I'd like to direct you to TX-4313, please.

3                 (Witness complied.)

4     **Q.** Do you recognize this as a -- it looks like it's an email  
5                 from yourself to yourself from January 2nd, 2016?

6     **A.** Yeah. I think that's a draft of some of the thoughts at  
7                 that time.

8                 **MR. PERLSON:** Okay. Your Honor, I'd like to admit  
9                 4313, please.

10                **MR. CARMODY:** No objection, Your Honor.

11                **THE COURT:** Thank you. Received.

12                 (Trial Exhibit 4313 received in evidence.)

13                 (Document displayed.)

14     **BY MR. PERLSON**

15     **Q.** This is a set of talking points to review with Uber; is  
16                 that correct?

17     **A.** I believe so, yes.

18     **Q.** Now, the first line of the email says:

19                 "Connect on concrete vision."

20                 Then it goes on to say:

21                 "Help Uber win the self-driving race."

22                 Do you see that?

23     **A.** Yes, I can see that.

24     **Q.** And so one of the talking points that you were discussing  
25                 with Uber was how to win the self-driving race; correct?

1     **A.**   That was one of the talking points, along with creating a  
2 truck business and other talking points in the document, yes.

3     **Q.**   And then under "Value," you wrote:

4                 "Accelerate 300 to \$500 million a year. Cut at  
5 least a year, probably more."

6                 Do you see that?

7     **A.**   Yes, I can see that.

8     **Q.**   And then another point was that -- so that was the  
9 acceleration could be worth between 300 and \$500 million a  
10 year; right?

11    **A.**   Yes, I can see that.

12    **Q.**   And on the next line you write:

13                 "Reduce capital costs to compete with G in the  
14 meantime. Few hundred millions on top."

15                 Do you see that?

16    **A.**   Yes, I can see that.

17    **Q.**   And then, further down, it says:

18                 "Trucking, \$700 billion a year potential."

19                 Do you see that?

20    **A.**   Yes. We were very excited about the potential in the  
21 trucking market, to do self-driving trucks.

22    **Q.**   And you wrote \$700 billion a year potential?

23    **A.**   That's the size of the trucking market in the United  
24 States, yes.

25    **Q.**   Now, look at 5472, please.

1     **A.** Sorry. 57?

2     **Q.** 5472, please.

3                 This is an email from yourself -- or a text from yourself  
4 to Mr. Levandowski?

5     **A.** Yes, that's correct.

6     **Q.** Dated March 6th, 2016?

7     **A.** Yes.

8     **Q.** Okay.

9                 **MR. PERLSON:** Could we please move 5472 into evidence?

10                **MR. CARMODY:** No objection.

11                **THE COURT:** Thank you. Received.

12                 (Trial Exhibit 5472 received in evidence.)

13     **BY MR. PERLSON**

14     **Q.** And, actually, look at the time stamp there. It's  
15 actually March 13, 2016. Do you see that?

16     **A.** Yes, I do.

17     **Q.** And it says "TK." Do you see that?

18     **A.** Yes.

19     **Q.** That's Travis Kalanick?

20     **A.** Yes.

21     **Q.** Next to "TK," you write:

22                 "This is all about winning."

23                 Right?

24     **A.** That's correct.

25     **Q.** And under that, it says:

1                 "To win, we have to cross the finish line first.

2                 Losing is not an option."

3                 Correct?

4         **A.**    That's correct.

5         **Q.**    These were things that Mr. Kalanick told you; right?

6         **A.**    No, those are things that we prepared for discussion with  
7                 Travis. We were just worried about the team at Uber at that  
8                 point and on the overall deal. We're not sure it's the right  
9                 thing for us to even partner with Uber.

10        **Q.**    So you told -- you wanted to tell Mr. Kalanick that to win  
11                 -- that it's all about winning?

12        **A.**    Yes. We wanted to share some of the concerns we had with  
13                 the team. As you can see in the line after, Google is only  
14                 here because of team leadership spirit, not because of  
15                 technology.

16                 We just wanted to share some of our concerns with the Uber  
17                 team at the time and really discuss if it's the right thing for  
18                 us to do, to partner with Uber.

19        **Q.**    Sir, it says:

20                 "To win, we have to cross the finish line first.

21                 Losing is not an option."

22                 This is --

23         **MR. CARMODY:** I'm sorry. Can we see the next line so  
24                 we can see -- so we're not --

25         **MR. PERLSON:** Your Honor, he can ask him about that on

1 redirect. I'm asking about this line.

2           **MR. CARMODY:** It's an optional completeness objection,  
3 Your Honor, 106.

4           **THE COURT:** All right. Show him the rest of the  
5 remaining lines in the email.

6           (Document displayed.)

7           **BY MR. PERLSON**

8           **Q.** But in an email that you wrote to Mr. Levandowski, under  
9 "TK," it says:

10           "To win, we have to cross the finish line first.

11           Losing is not an option."

12           Your words; yes? Yes or no?

13           **A.** Yes.

14           **Q.** Now, Mr. Ron, today you actually still have an ongoing  
15 business relationship with Mr. Levandowski; correct?

16           **A.** How is that so? I'm sorry. Can you explain?

17           **THE COURT:** That's a vague question.

18           **MR. PERLSON:** Okay. Well --

19           **THE COURT:** I'm sustaining the witness's objection.

20           (Laughter.)

21           **MR. PERLSON:** Fair enough, Your Honor.

22           **BY MR. PERLSON**

23           **Q.** You still own a business, a company, with Mr. Levandowski;  
24 true?

25           **A.** We are both -- have interests and shareholders in a

holding company.

**MR. PERLSON:** Thank you, Your Honor. No further questions.

**THE COURT:** All right.

Mr. Carmody, your turn.

**MR. CARMODY:** Thank you, Your Honor.

## **CROSS EXAMINATION**

**BY MR. CARMODY**

**Q.** Good morning, Mr. Ron. How are you?

**A.** Good morning. Good. Thanks for asking.

Q. There was some discussion about text messages between yourself and Mr. Levandowski. Remember that?

A. Yes, I do.

**Q.** You deleted some text messages. Why was that?

**A.** Anthony asked me to delete messages from time to time. I didn't think much of it. He was a discreet person. So sometimes I complied and sometimes I didn't.

**Q.** Did you and Mr. Levandowski ever use text messages to discuss any self-driving car technology?

**A.** No. We have never discussed technology in text messages.

Q. Now, you understand through this lawsuit that Mr. Levandowski downloads some files while he's at Google back in December of 2015?

**A.** I understand that through the lawsuit. I wasn't aware of that before.

1     **Q.** And that's my question. Did you ever -- in your  
2 discussions with Mr. Levandowski, did the two of you ever  
3 discuss any files he may have downloaded while he was at  
4 Google?

5     **A.** No, we have not.

6     **Q.** Did you, in your discussions with Mr. Levandowski, ever  
7 discuss self-driving car technology?

8     **A.** No. Just on a high level, but not specifics.

9     **Q.** Did you and Mr. Levandowski ever discuss any potential  
10 Google trade secrets?

11    **A.** No, we have not.

12    **Q.** To this day, sir, are you aware of any what you believe to  
13 be Google trade secrets?

14    **A.** No, I'm not.

15    **Q.** Do you have any understanding of self-driving car  
16 technology?

17    **A.** No. Just on a very high level but not the specifics.

18    **Q.** Do you have any reason to believe that any self-driving  
19 car technology that was once part and parcel of Google ever  
20 made its way into your little company called Ottomotto?

21    **A.** No, I don't have any reason to believe that.

22    **Q.** And why is that, sir?

23    **A.** Well, a few reasons. One, we had a very strict policy in  
24 place asking employees to sign, as part of their employment  
25 contract, that they wouldn't bring any IP from outside of the

1 company to Ottomotto. We had that very clear and we  
2 communicated that both verbally and in writing to the  
3 employees.

4 Second, and I think it's important to remember, we were a  
5 small team of folks that were very passionate about bringing  
6 the safety technology to a new market to self-driving trucks,  
7 and that's a market that nobody was actually doing anything  
8 about. And we were actually proud we left big companies,  
9 Apple, Tesla, Google, and we are very proud to innovate and  
10 create new things, not copy old stuff.

11 So I'm pretty sure if there was such a thing, some of the  
12 team will speak out because, again, that was not the team  
13 spirit.

14 Q. Thank you, sir.

15 Now, we hear your accent. Is English your first language?

16 A. No, it's not.

17 Q. Where are you from, sir?

18 A. I was born and raised in Israel, just outside of Haifa.

19 Q. And how and when do you come to the United States?

20 A. I started my undergrad and master in Technion, Israel  
21 Institute of Technology, and then served as a captain in the  
22 Israel military. And packed up my suitcase four days after  
23 leaving the military and moved to the Bay Area to study in  
24 Stanford.

25 Q. And where did you -- what did you study at Stanford, sir?

1     **A.** I always aspired to be entrepreneur, so I studied business  
2 at the Stanford business school.

3     **Q.** Okay. And after you got out of Stanford business school,  
4 you end up at Google?

5     **A.** Yes, that's correct.

6     **Q.** Give us the time.

7     **A.** I joined the Google Maps team in 2007.

8     **Q.** And is that how you come to meet Anthony Levandowski?

9     **A.** Yes. We met a handful of times as colleagues on the  
10 Google Maps team in 2007.

11    **Q.** And do you then develop a friendship with him?

12    **A.** No. We actually didn't stay in touch. I lost track of  
13 Anthony and his whereabouts, and we got reconnected at Google  
14 in 2015.

15    **Q.** And how did that come about?

16    **A.** I came back to Google because I had -- for a short time I  
17 was at Motorola. So I came back to Google and got reconnected  
18 with a bunch of colleagues, and Anthony was one of them.

19    **Q.** And take us back, if you will, sir, to that time. So it  
20 sounds like it's about the early fall of 2015?

21    **A.** Yes, that's about right.

22    **Q.** So take us through the kind of relationship you're  
23 developing with Mr. Levandowski. What happens?

24    **A.** Well, I reconnected with him, and he just shared with me  
25 some of his frustration from the Chauffeur Project, just the

1 overall lack of focus and direction and just very slow  
2 progress. And that was the frustration that I think was shared  
3 among a large group of people at that project.

4 **Q.** And what role did you have in terms -- I mean, were you  
5 his sounding board or --

6 **A.** Yes. So we just started discussing -- I want to help, so  
7 we started discussing ways in which we can help the Google  
8 Chauffeur Project of potentially accelerating or being more  
9 focused. That's how our conversation started.

10 **Q.** And was there a point in time when you talked about doing  
11 something together?

12 **A.** Yes. So then after that initial period, we've concluded  
13 actually the best way to help is to focus on something brand  
14 new, which is commercial transportation, which is so important  
15 to the economy; and nobody, including Google, was paying any  
16 attention or really focused on bringing safety technology to  
17 that market. So we decided to pursue essentially a project  
18 developing self-driving trucks.

19 **Q.** Now, the self-driving trucks was that big market you  
20 talked about with counsel; correct?

21 **A.** Correct. That's a very big market.

22 **Q.** And tell us about the form of the business. In other  
23 words, what I hear you saying is you and Anthony Levandowski  
24 got together and you were intrigued by this idea of  
25 self-driving trucks; fair?

1       **A.**    That's fair, yeah. We were intrigued and actually very  
2 motivated to help with that problem. Thousands of unnecessary  
3 deaths by truck accidents every year in the U.S.

4           So then we explored couple of options to basically develop  
5 that project. The first option was to actually build another  
6 team pursuing self-driving trucks at Google in parallel to the  
7 existing Chauffeur team.

8       **Q.**    Is that what we saw -- is that what Team Mac refers to?

9       **A.**    Correct. That refers to an Apple history. They basically  
10 set up two teams, Team Lisa and Team Mac, to pursue personal  
11 computing. And we thought along those lines, we could set up a  
12 new team in Google to pursue that self-driving vision.

13      **Q.**    And you also mentioned, sir, there were a couple other  
14 options. What were they?

15     **A.**    So the first option was to do a team within Google. If  
16 that wouldn't work out, the second option was to actually start  
17 the company but still being funded by Google. Google has done  
18 that with numerous companies in the past. And we thought  
19 because self-driving trucks is very complementary to  
20 self-driving cars, there's a way we can actually get Google  
21 interested in funding that startup.

22           And then the third option was, if that doesn't work out,  
23 we can actually leave, do a startup and be funded by other  
24 sources, either venture capital money -- we've met many of  
25 those -- or by another strategy partner. Uber being one of

1 those, Lyft being another, and many others.

2 **Q.** And during this point, this time frame, are you talking to  
3 Google and Lyft and some other companies?

4 **A.** Correct. Basically, we're not sure what's the right  
5 direction, and we sort of kept going back and forth between  
6 options and just developing those options.

7 So we're talking with Google about building a team in  
8 Google, but we were also preparing to potentially leave and  
9 talking with Uber, Lyft, and other venture capitalists.

10 **Q.** We understand you now work at Uber. What is your role at  
11 Uber?

12 **A.** I do, and I head up the trucking division at Uber.

13 **Q.** Okay. And why didn't you and Mr. Levandowski, with his  
14 new company that you wanted to start up, why didn't you end up  
15 at either Google or Lyft or somewhere else?

16 **A.** I always believed the potential for self-driving trucks  
17 and trucks in general is just enormous. The ability to save  
18 life, to help with a big part of the economy, I always thought  
19 this is really the opportunity to help.

20 And what was the deciding factor for us is Google  
21 eventually was not interested in doing anything with  
22 self-driving trucks. Lyft, we actually had an offer on the  
23 table, but Lyft was not interested in actually supporting  
24 trucks and starting a trucks division. But Uber was. And we  
25 thought it's the best place to actually start a full trucking

1 operation.

2 Q. Now, will you take a look, sir, at this timeline that the  
3 parties have put together. You see it says December 11th. And  
4 that's the date that Mr. Levandowski downloads files while he's  
5 a Google employee.

6 Do you see that?

7 A. Yes, I can see that.

8 Q. At that point in time, certainly what I'm hearing you say  
9 is you and Mr. Levandowski talked about doing a company  
10 together, one of these three options you discussed; correct?

11 A. Yes, that's correct.

12 Q. As of that date, sir, was there any determination made of  
13 what option ultimately you were going to pursue?

14 A. No, there was no determination.

15 Q. Now, let's fast forward, if we can, in time. Let's  
16 leapfrog, if you will, past December 11th and go into this  
17 January of 2016 time frame. Okay?

18 A. Okay.

19 Q. Now, I'd like to have you look -- can you look at your  
20 binder, sir, at Exhibit 3226, please?

21 Here you go.

22 (Whereupon binder was tendered to the witness.)

23 A. Thank you. 3220...

24 Q. 3226.

25 MR. PERLSON: Which one is this?

1           **MR. CARMODY:** 3226.

2       **BY MR. CARMODY**

3       **Q.** And what it is, sir, there's a bunch of texts back and  
4 forth. I'd like you to put your eyes on two pages, please.  
5 One's the --

6       **A.** I'm sorry. Can you repeat the number? 32...?

7       **Q.** Well, it's Exhibit 3226. Do you have that?

8       **A.** I do. Do you want to refer to 3224 or 3226?

9       **Q.** 3226.

10           **THE COURT:** Why don't you help the witness find it,  
11 please.

12           **THE WITNESS:** Okay. This one?

13       **BY MR. CARMODY**

14       **Q.** Yes, sir.

15           And now we're going to go to the bottom right, if you  
16 will. And you see these little numbers on the bottom? Yes,  
17 you got it. See these little numbers?

18       **A.** Yeah.

19       **Q.** Go to numbers 268.

20       **A.** 260- --

21       **Q.** 267 and 268, please.

22       **A.** Yes. Uh-huh.

23       **Q.** Okay. We see some texts back and forth --

24       **A.** Yes.

25       **Q.** -- between yourself and Mr. Levandowski?

1       **A.** Yes, I see that.

2       **Q.** And we see the date of the texts are January 22nd of 2016;  
3 correct?

4       **A.** Yes.

5           **MR. CARMODY:** I offer, Your Honor, Exhibit 3226.

6           **MR. PERLSON:** Objection, Your Honor. It's hearsay.

7           **MR. CARMODY:** 803.3, Your Honor. It evidences  
8 Mr. Levandowski's state of mind, which, you know, is the heart  
9 of this case, what he's thinking and what he's planning to do  
10 during the time they say he's colluding with Uber.

11           **THE COURT:** Can I see the exhibit?

12           **MR. CARMODY:** Of course, Your Honor. I have a copy.  
13 Mine's a little marked up, but I think you get the drift.

14           (Whereupon document was tendered to the Court.)

15           **MR. CARMODY:** It's that page, Your Honor, and the page  
16 that follows it. There are two texts in a row.

17           (Brief pause.)

18           **THE COURT:** You want to put in evidence page 267 and  
19 268?

20           **MR. CARMODY:** Yes, Your Honor.

21           **THE COURT:** And then not the rest of the exhibit.

22           **MR. CARMODY:** That's fine. We can excise that, yes,  
23 Your Honor.

24           **THE COURT:** All right. Well, on the -- again, it's  
25 like the problem before. These are admissible. The hearsay

1 objection is not well taken on account of this is like proving  
2 up a transaction.

3 So those two pages are going to be in evidence. What is  
4 the exhibit number, though?

5 **MR. CARMODY:** It's 3226, Your Honor.

6 **THE COURT:** And pages 267 --

7 **MR. CARMODY:** And 268.

8 **THE COURT:** Thank you. All right. Go ahead.

9 (Trial Exhibit 3226, pages 267 and 268 received in  
10 evidence)

11 (Document displayed)

12 **BY MR. CARMODY**

13 **Q.** Now, if we take a look here on the big screen, what we see  
14 here is -- we're back in -- we're at January 22nd. Okay? And  
15 so these downloads that have been talked about, sir, happen in  
16 December.

17 Now we're past this. We're right around here in the  
18 timeline (indicating), and we have Anthony Levandowski sending  
19 you a text --

20 **MR. PERLSON:** Objection, Your Honor. He's testifying  
21 now.

22 **THE COURT:** It does sound like summation. So what is  
23 your question instead of --

24 **BY MR. CARMODY**

25 **Q.** The question is, would you read us what Mr. Levandowski is

1 texting you on January 22nd, 2016?

2 **A.** Yeah. He texted me that:

3 "We need to have hard terms from TK" -- that's  
4 Travis -- "no vest, 100bp, report et cetera. No  
5 compromises."

6 **Q.** And these are the terms of the deal you want with Uber?

7 **A.** Correct. We were negotiating with Uber at that point and  
8 we were not sure that that's the right venue for us, so...

9 **Q.** And were you also negotiating with Lyft and others at that  
10 time?

11 **A.** Correct, including still being in touch with Google on  
12 potential funding. Just not sure what's the right thing for us  
13 to do at that point.

14 **Q.** And let's see what Anthony Levandowski says to you next.

15 (Document displayed.)

16 **Q.** Would you read that -- would you read that to us, sir?

17 **A.** Yes. He said:

18 "Or else we destroy him."

19 **Q.** And who is the "him"?

20 **A.** Him is Travis. It's a very Anthony language, yes.

21 **Q.** Okay. Now, in the next exhibit, sir, I'd like you to take  
22 a look -- and maybe we can make this quicker. I'm going to  
23 offer 3227, which is another text exchange a few days later  
24 between yourself and Mr. Levandowski.

25 **A.** Yes.

1           **MR. PERLSON:** No objection, Your Honor.

2           **THE COURT:** Thank you. Received in evidence.

3           (Trial Exhibit 3227 received in evidence.)

4           **MR. CARMODY:** Would you click on 227 up there?

5           (Document displayed.)

6           **BY MR. CARMODY**

7           **Q.** Now, let's take a look at this, sir. So now we're a  
8 couple days after Mr. Levandowski's talking about destroying  
9 Travis Kalanick if he doesn't meet the terms of the deal --

10           **THE COURT:** Wait, wait. Now wait. You're -- you're  
11 insinuating lawyer argument into your questions.

12           **MR. CARMODY:** Okay.

13           **THE COURT:** So just ask a fresh question instead of  
14 saying he's talking about destroying -- no. That's -- we  
15 already covered that part, so now cover a new point.

16           **MR. CARMODY:** Thank you, Your Honor.

17           **BY MR. CARMODY**

18           **Q.** If we take a look here, we have the date. Walk us through  
19 this text, please. It is January 23rd, 2016.

20           **A.** This is a text from Anthony to myself saying:

21                 "I am super pumped" -- that's Anthony -- "about  
22 negotiating this Monday with LP" -- that's Larry  
23 Page -- "and JK" -- that's John Krafcik.

24           **Q.** And what was -- what sort of negotiations are going on?

25           **A.** We were still negotiating with Google, potentially them

1 investing in us, as a very complementary business to them in  
2 the area of self-driving trucks.

3 I think John was about to visit us and he was in  
4 connection with Anthony. So we discussed the option where  
5 Google will potentially fund us.

6 And from our perspective, we had a lot of options on the  
7 table. We really wanted to pursue that vision of self-driving  
8 trucks, and we're just not sure what's the right option.

9 And one of the concern I had was, you know, at that point  
10 we're very complementary to Google. If we are to partner with  
11 Uber, I was concerned that will be deemed somewhat competitive  
12 by Google at that point.

13 **Q.** And the final question, sir, is you had a lot of  
14 discussions with Mr. Levandowski around this time. Did you  
15 have any basis whatsoever to believe that Mr. Levandowski had  
16 some sort of a collusive deal with anybody at Uber?

17 **A.** No, I do not have any basis to believe that.

18 **MR. CARMODY:** Thank you. I'll pass, Your Honor.

19 **THE COURT:** All right. Redirect.

20 REDIRECT EXAMINATION

21 **BY MR. PERLSON**

22 **Q.** So you were shown a text about negotiating with  
23 Mr. Kalanick or else destroying him; right?

24 **A.** Yes, that's correct.

25 **Q.** You didn't -- you didn't destroy Mr. Kalanick, did you?

1     **A.**   No, we did not.

2     **Q.**   You were still in negotiations?

3     **A.**   We had a very long and very, very tough negotiation on  
4 many aspects of the deal.

5     **Q.**   Right. And you ultimately ended up with a deal that,  
6 subject to milestones, would have netted Otto close to  
7 \$600 million; right?

8     **A.**   That was the quoted number in the press, but the reality  
9 is we didn't hit any of those milestones and two years to that  
10 date I've netted \$20,000 from that transaction.

11    **Q.**   That's not the question I asked you, sir.

12           The question I asked you is: The deal you negotiated, is  
13 that subject to milestones? If you meet them, you would earn  
14 almost \$600 million; right?

15    **A.**   That is correct.

16    **Q.**   Now, you mentioned Lyft a few times. But you didn't have  
17 any term sheet with Lyft, did you?

18    **A.**   We were pretty close to actually getting a term sheet from  
19 Lyft.

20    **Q.**   Did you have a term sheet with Lyft?

21    **A.**   We have discussed dollar numbers with Lyft, and we had a  
22 written offer on the table.

23    **Q.**   Okay. Was there -- there's no term sheet agreement?

24    **A.**   We did not progress to a full term sheet agreement.

25    **Q.**   Okay. And there were no technical milestones with Lyft?

**A.** We had milestones with Lyft.

**Q.** Okay. Not agreed?

**A.** Agreed verbally, but nothing approved as to a term sheet.

**Q.** So you're saying that you had an agreement with Lyft?

**A.** We did have very broad discussions with Lyft on milestones.

Q. Sir, you are saying that you had an agreement with Lyft regarding your new company, an actual agreement? That's what your testimony is now?

**A.** No. We had verbal discussions with Lyft.

Q. Okay. So you didn't have any indemnification agreement with Lyft, did you?

**A.** We never signed a term sheet with them.

Q. Okay. So, sir, answer my question, please. You had no indemnification agreement with Lyft; right?

A. That's correct.

Q. You had no agreement with Lyft to indemnify you from bad acts; right?

A. That's correct.

**MR. PERLSON:** No further questions, Your Honor.

**THE COURT:** Anything more?

## **RECROSS-EXAMINATION**

BY MR. CARMODY

Q. Did the negotiations with Lyft -- you said you had a verbal understanding. You had the offer. Did they ever get

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1 far enough where there was any discussion of indemnity?

2 **A.** No, they did not.

3 **Q.** And how much money did you get from coming over to Uber in  
4 this big deal where you had numbers in the nine figures? How  
5 much money did you ultimately get?

6 **A.** I got a salary cut, and we didn't end up hitting any of  
7 the milestones and -- and so I got \$20,000 from the initial  
8 proceeding, the \$100,000 I was paid for the deal.

9 **MR. CARMODY:** Thanks.

10 **THE COURT:** May the witness now be excused?

11 **MR. CARMODY:** Fine with Uber, Your Honor.

12 **MR. PERLSON:** Yes, Your Honor.

13 **THE COURT:** Mr. Ron, thank you for coming. You're  
14 excused in the trial. Have a good day.

15 **THE WITNESS:** Thank you.

16 (Witness excused.)

17 **THE COURT:** Okay. It's time for our next break.

18 Please remember, don't talk about the case among  
19 yourselves. It will be your duty to do that later, but you've  
20 got to keep an open mind in the meantime and -- and don't talk  
21 about the case in the jury room yet.

22 All right. We'll see you in 15 minutes.

23 **THE CLERK:** All rise for the jury.

24 (Jury exits the courtroom at 11:27 a.m.)

25 **THE COURT:** Be seated.

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1 Any issues for the judge? Hearing none, I'm going to --  
2 is there any issue for the judge?

3 **MR. GONZÁLEZ:** Just one second, Your Honor.

4 (Discussion held off the record amongst defense  
5 counsel.)

6 **MR. GONZÁLEZ:** Nothing, Your Honor.

7 **THE COURT:** Anything?

8 **MR. VERHOEVEN:** The only thing I'm going to do, and we  
9 talked about this so I won't belabor it, but the next witness  
10 is Mr. Friedberg from Stroz. And he submitted a declaration as  
11 part of this litigation authenticating these documents that we  
12 were talking about this morning.

13 We sent them a list, a very small list of the documents  
14 that he's already authenticated. And their position is I have  
15 to go through each one of those exhibits and essentially say,  
16 "Is that the Bates range of your -- of the documents that you  
17 signed the declaration on?"

18 It's just silly. So I'm -- I'm urging, once again, that  
19 I -- that we can just agree to this.

20 I mean, the man has submitted a declaration as part of  
21 this litigation certifying that these documents are authentic,  
22 and we have it and I don't know why there's a dispute.

23 **MR. RABIN:** May I respond, Your Honor?

24 **THE COURT:** Yes.

25 **MR. RABIN:** We have tried to give them as much as we

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1 possibly can to take this witness out of play for purposes of  
2 what they need to meet their evidentiary burden. We stipulate  
3 that the documents are authentic. We've stipulated with them  
4 where the documents came from.

5 The only problem is how then do you get whatever these  
6 documents are, whether they're a picture of a PCB board or  
7 whether they're picture of a dollhouse, before the jury without  
8 the jury having a basis to understand what the documents are?

9 This -- Mr. Friedberg can't -- can't lay the foundation  
10 for the substance of the document to be before the jury. And  
11 so there has to be a witness who can actually say what the  
12 document is.

13 Now, if it's an email, we're not so worried about that.  
14 This -- you know, the jury can see what an email is as long as  
15 it doesn't have something that's confusing.

16 The problem is if there's pictures or diagrams, then  
17 that's not fair because the jury's not going to have any idea  
18 to be able to determine what they -- what they're looking at.  
19 All they're going to know is this was, for example, on  
20 Mr. Levandowski's computer.

21 But it would be unfair and prejudicial for the jury to  
22 think, well, this looks like a PCB board, so maybe it's a trade  
23 secret, when it could be, you know, something completely  
24 different because there's nobody to lay the foundation for what  
25 the document actually is.

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1           **THE COURT:** Look. You've got to do it the hard way.

2           **MR. VERHOEVEN:** Well, can I just --

3           **THE COURT:** I'm not going to force them to do  
4 something that -- I don't know who's being unreasonable here,  
5 but we'll have to just go through them one at a time.

6           **MR. VERHOEVEN:** Can I have a quick response?

7           **THE COURT:** Yes.

8           **MR. VERHOEVEN:** There's a very small number from these  
9 exhibits that our expert is going to talk about and --

10          **THE COURT:** Whose expert?

11          **MR. VERHOEVEN:** Our expert.

12          **THE COURT:** Yeah?

13          **MR. VERHOEVEN:** He's going to tell the -- all we're  
14 trying to establish is these came from Levandowski's computer,  
15 and then our expert's going to describe what they are.

16          It's just authenticity. That's the only reason we're  
17 talking about this. And he just said that they're willing to  
18 agree they're authentic.

19          We have a witness who will describe them, Your Honor. I  
20 just don't want them to say, "You can't use these documents  
21 because you haven't moved them in with Stroz." And they're  
22 just going to take our time. I mean, there's just -- it's just  
23 gamesmanship, frankly.

24          **THE COURT:** Well, you wouldn't be guilty of that at  
25 any point, would you?

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1 (Laughter.)

2           **THE COURT:** You've got to do it the hard way for now,  
3 but if I -- listen. On the Uber side, if I see that this is  
4 going in an unfair way, I'm just going to wave my hands and  
5 direct that they all come into evidence --

6           **MR. RABIN:** Yes, Your Honor.

7           **THE COURT:** -- and overrule you in the presence of the  
8 jury. And my advice to you is to be reasonable and avoid that  
9 scenario.

10          **MR. RABIN:** And we came up with a proposal, Your  
11 Honor, which was --

12          **THE COURT:** I don't want to hear it.

13          **MR. RABIN:** Okay.

14          **THE COURT:** I'm going to hear it in front of the jury.  
15 We'll take 15 minutes.

16          **THE CLERK:** Court is in recess.

17          (Whereupon there was a recess in the proceedings  
18 from 11:31 a.m. until 11:53 a.m.)

19          **THE COURT:** Back to work. Bring in the jury.

20          **MR. VERHOEVEN:** We have an agreement real quick.

21          **THE COURT:** All right. Let's have it.

22          **MR. VERHOEVEN:** After I was kvetching, they came  
23 around and said we have an agreement.

24          **MR. RABIN:** So our -- taking your guidance, we will  
25 not object as long as their expert properly lays the foundation

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1 for what each of the documents are. We won't object that it's  
2 the expert that's trying to get them into evidence.

3 **MR. VERHOEVEN:** In other words, they'll stipulate --

4 **THE COURT:** Of course the expert's not going to know  
5 what they are. How are you going to meet that? He can't --  
6 the expert can't have personal knowledge to lay foundation. He  
7 can only say what he thinks it is.

8 **MR. VERHOEVEN:** Well, what we're interested in is  
9 that -- is not running into a problem with the chain of custody  
10 from these documents coming from Mr. Levandowski's computer  
11 through Stroz and the production to -- in this litigation. And  
12 they are not going to raise that as a problem, is what they're  
13 saying, as long as we show the document and talk about it.  
14 They just don't want to do a blanket agreement that every  
15 single document Stroz produced comes in.

16 **MR. RABIN:** Right.

17 **MR. VERHOEVEN:** Is that right?

18 **MR. RABIN:** The chain of custody part's 100 percent  
19 correct.

20 Their expert still has to go through the document,  
21 identify what it was. And obviously, in order for the expert  
22 to do that, it had to have been disclosed by the expert in  
23 their report.

24 But if they can lay all those pieces, then we will give  
25 them leeway on their evidentiary obstacle they've got.

1           **THE COURT:** I hope there's an agreement.

2           (Laughter.)

3           **THE COURT:** All right. Let's bring in the jury.

4           **MR. RABIN:** Thank you, Your Honor.

5           (Jury enters the courtroom at 11:55 a.m.)

6           **THE COURT:** All right. Welcome back. Be seated.

7           Now, next witness.

8           **MR. VERHOEVEN:** Thank you, Your Honor. Waymo calls  
9 Eric Friedberg, who is on the stand already.

10          **THE COURT:** All right. Please raise your right hand.

11                 ERIC FRIEDBERG,

12 called as a witness for the Plaintiff, having been duly sworn,  
13 testified as follows:

14          **THE WITNESS:** I do.

15          **THE CLERK:** Please be seated.

16          **THE COURT:** All right. Thank you. Welcome.

17          **THE WITNESS:** Thank you.

18          **THE COURT:** Sit down. Move the mic around so that --  
19 it goes up and down -- it will catch your voice. So do that.

20 Say your name, please.

21          **THE WITNESS:** Eric Friedberg.

22          **THE COURT:** That's good. Thank you.

23 Go ahead, Counsel.

24          **MR. VERHOEVEN:** Thank you, Your Honor?

**DIRECT EXAMINATION**

BY MR. VERHOEVEN

Q. Good morning, Mr. Friedberg.

**A.** Good morning.

**Q.** You are currently a co-president of the firm Stroz Friedberg?

**A.** Stroz Friedberg, yes.

Q. Stroz. Thank you. I was always wondering how that was pronounced. Stroz Friedberg.

And you were one of its founders?

A. I joined the firm in the first three months. Ed founded the firm and I joined shortly thereafter.

Q. Okay. I'm going to refer to the firm as just, I guess, Stroz. Is that okay?

A. Yes, sir.

9. You don't mind being cut out of the name?

**A.** I do not.

Q. All right. What is Stroz's business?

**A.** Stroz Friedberg is a consulting and technical services firm that focuses on digital forensics, computer crime response, computer security, electronic discovery, investigations, and due diligence.

Q. Uber and Ottomotto retained your firm in approximately March of -- March 4, 2016 to conduct an investigation; correct?

A. Yes, sir.

1 Q. Can we -- I'd like to show the witness Exhibit 354.

2 MR. VERHOEVEN: Is there any objection?

3 MR. BRILLE: No objection.

4 THE COURT: 54 is in evidence.

5 (Trial Exhibit 54 received in evidence.)

6 MR. VERHOEVEN: Put it on the screen, please.

7 BY MR. VERHOEVEN

8 Q. Turn to it in your binder, if you would like.

9 (Document displayed.)

10 Q. You recognize this document as the engagement letter for  
11 this due diligence investigation; correct?

12 A. It's missing the protocol that's supposed to be attached  
13 to it, but it's the engagement letter, yes.

14 Q. Okay. With that clarification. And the date is  
15 March 4th, 2016?

16 A. Correct.

17 Q. And one of the signatories on the back is a lawyer from  
18 the law firm O'Melveny Meyers on behalf of Ottomotto; is that  
19 right?

20 A. Correct.

21 Q. And there is another signature there by a fellow named  
22 Eric Tate, who is a lawyer at Morrison Foerster; right?

23 A. Correct.

24 Q. And he is representing Uber; is that right?

25 A. That's right.

Q. Okay. Isn't it true, sir, that at the time you were retained you did not have an understanding of the proposed corporate event that might be occurring between Uber and Ottomotto?

**A.** Correct. I mean, not in any detail.

Q. Now, you conducted the investigation and you prepared a summary report detailing Stroz's findings as a result of this engagement; correct?

**A.** Could you repeat the question, please?

Q. Sure. Your firm prepared a summary report -- I believe it's dated August 4th, 2016 -- in which you reported your findings with respect to this investigation.

A. Yes, sir.

Q. Okay. And I'd like to show the witness Exhibit 7912.

**MR. VERHOEVEN:** Is there any objection?

**MR. BRILLE:** There is no objection.

**THE COURT:** 7192?

**MR. VERHOEVEN:** 7912.

**THE COURT:** Is there any objection?

**MR. BRILLE:** No.

**MR. VERHOEVEN:** 7912.

**THE COURT:** Received in evidence.

(Trial Exhibit 7912 received in evidence.)

**MR. VERHOEVEN:** And we just put the first page up on

1       Mr. Fisher, can we pull out the middle part there with the  
2 words on it?

3                     (Document displayed)

4 **BY MR. VERHOEVEN**

5 **Q.**   So this is the report that you just mentioned; correct?

6 **A.**   Yes, sir.

7 **Q.**   And I was wrong. It's August 5, 2016; right?

8 **A.**   Yes, sir.

9 **Q.**   It was prepared for Morrison Foerster, which is the  
10 attorneys for Uber; right?

11 **A.**   Correct.

12 **Q.**   And for O'Melveny Meyers, who are the attorneys for  
13 Ottomotto; correct?

14 **A.**   Correct.

15                     **MR. VERHOEVEN:** We can put that down.

16                     (Document removed from display.)

17 **BY MR. VERHOEVEN**

18 **Q.**   Stroz's due diligence investigation -- and I'm just going  
19 to refer to it as "the due diligence investigation" and you'll  
20 know I'm talking about this one; right?

21 **A.**   Yes.

22 **Q.**   Stroz's due diligence investigation began approximately  
23 the third week in March, right, of 2016?

24 **A.**   Approximately, yes.

25 **Q.**   And on -- right at the beginning, just a week or two into

1 it, Uber's attorney asked you to complete everything by  
2 April 3; right?

3 **A.** They asked us if we could, as I recall.

4 **Q.** Let's look at Exhibit 5078.

5 **MR. VERHOEVEN:** Is there any objection to this one?

6 **MR. BRILLE:** No.

7 **MR. VERHOEVEN:** 5078, Your Honor.

8 **THE COURT:** All right. Received in evidence.

9 (Trial Exhibit 5078 received in evidence.)

10 **MR. VERHOEVEN:** Put it up, please.

11 And can we pull up the email at the bottom from Hanley  
12 Chew?

13 (Document displayed)

14 **BY MR. VERHOEVEN:**

15 **Q.** Who is Hanley Chew?

16 **A.** Hanley Chew was a managing director of our firm who was  
17 one of the engagement managers on the case. He was a former  
18 cyber prosecutor from the U.S. Attorney's Office in  
19 San Francisco.

20 **Q.** And he says:

21 "I received a call from Eric Tate this evening."

22 Now, Eric Tate is the attorney for Uber; right?

23 **A.** Correct.

24 **Q.** (As read).

25 "I received a call from Eric Tate this evening.

1       He wanted to know (1) if it was possible to complete  
2       everything, including the report, by April 3."

3       Do you see that?

4       **A.**    Correct.

5       **Q.**    And then how much it would cost. And if it wasn't  
6       possible, what's the soonest it could reasonably be done and  
7       how much cost.

8       Do you see that?

9       **A.**    Correct. Yes.

10      **Q.**    I don't know if you said this, but if you did, I  
11      apologize.

12       Mr. Chew was the managing director of Stroz's  
13       San Francisco office at the time?

14       **A.**    Yes, sir.

15       **Q.**    And he was working on the due diligence investigation?

16       **A.**    Yes.

17       **Q.**    Now, moving up the chain, there are two responses from a  
18       person named Mary Fulginiti. Is that the name?

19       **A.**    Fulginiti, yes.

20       **Q.**    Fulginiti. And the first one is:

21                  "You said no way; right?"

22       To Hanley Chew.

23       And then the second one up above:

24                  "You need to help manage expectations. This is  
25                  impossible."

1       And it goes on. Do you see that?

2       **A.** Yes.

3       **Q.** Does that accurately reflect your team's view of the  
4 ability to complete this thing by just a few days later,  
5 April 3rd?

6       **A.** That's Mary's take on her personal scheduling, but at the  
7 time we were not able to complete the investigation because  
8 there ended up being so much more data than we thought we would  
9 encounter at the beginning.

10      **Q.** You told Uber that Stroz couldn't complete everything,  
11 including the report, by April 3; right?

12      **A.** Correct.

13      **Q.** Now, let's turn to Exhibit 7661 in your binder.

14           **MR. VERHOEVEN:** We would like to move that. Is there  
15 any objection?

16           **MR. BRILLE:** No objection.

17           **THE COURT:** Received in evidence.

18           (Trial Exhibit 7661 received in evidence.)

19           **MR. VERHOEVEN:** 7661. And now if we could blow up --  
20 yeah, right there.

21           (Document displayed.)

22           **BY MR. VERHOEVEN**

23      **Q.** This is an email from you; correct?

24      **A.** Yes.

25      **Q.** And it's dated April 1?

1     **A.** Yes.

2     **Q.** And it's to Mr. Tate, among others. Do you see that?

3     **A.** Yes.

4     **Q.** And the first sentence says -- you're telling Mr. Tate and  
5 some of these other folks:

6                 "I'd say right now we have reviewed less than  
7                 1 percent of the data that we need to analyze because  
8                 we've only partially examined the self-identified  
9                 data, which is a minuscule part of the 500gb."

10               Do you see that?

11     **A.** Correct.

12     **Q.** What is 500gb?

13     **A.** 500 gigabytes of data.

14     **Q.** Then we skip the next sentence. Two sentences further, it  
15 says:

16                 "We don't know right now, of course, how much of  
17                 the 500gb is Aspen data."

18               What's Aspen?

19     **A.** That was a name for Google. Google data.

20     **Q.** A code name for Google data?

21     **A.** Yeah. The case -- the code name for Google data.

22     **Q.** (As read).

23                 "And we don't have it readily calculated."

24               And then it goes on. The next sentence says:

25                 "The point is, we've substantively examined

1           almost none of the 500 gigabytes."

2           And then it goes on. Do you see that?

3       **A.** Yes.

4       **Q.** And this is what you told the attorney for Uber on  
5 April 1st, 2016; correct?

6       **A.** Correct.

7           Mr. Verhoeven, can I please clarify something?

8       **Q.** You can clarify things on your counsel's -- you still work  
9 for Uber; right?

10      **A.** We are still performing work for Uber, yes.

11      **Q.** In connection with this litigation; right?

12      **A.** Yes.

13      **Q.** Okay.

14           **MR. BRILLE:** Your Honor, just to clarify --

15           **MR. VERHOEVEN:** Excuse me.

16           **MR. BRILLE:** -- if Mr. Verhoeven is referring to me,  
17 I'm not Mr. Friedberg's counsel.

18      **BY MR. VERHOEVEN**

19      **Q.** The firm Stroz still works for Uber in connection with  
20 this litigation; correct?

21      **A.** Correct.

22      **Q.** Thank you.

23           Now, it's your understanding that the April 3 deadline  
24 ended up getting moved to April 11th, 2016; correct?

25      **A.** I don't know if it was a deadline, but Uber wanted us to

1 tell them a certain amount of information by April 11th for a  
2 reason that they did not disclose to us at the time.

3 **Q.** Okay. The put-call agreement -- the acquisition agreement  
4 in which Uber acquired Ottomotto was signed on April 11th. You  
5 know that now; right?

6 **A.** I do not know that now. I've never seen the put-call  
7 agreement. I understand that to be the case, but I don't know  
8 it for a fact.

9 **Q.** Okay. But you understand now that that's the date of the  
10 agreement?

11 **A.** Again, I've never seen the agreement. I was told that at  
12 or about that time was when the put-call agreement was entered  
13 into.

14 **Q.** Okay. You were not able to complete your investigation by  
15 April 11th, were you?

16 **A.** No.

17 **Q.** You made clear to Uber through its attorney that Stroz had  
18 way more work to do; right?

19 **A.** Correct.

20                   **THE COURT:** Is that a pun, "way more work"?

21                   (Laughter.)

22                   **MR. VERHOEVEN:** I didn't think of that, but that's  
23 good.

24                   **THE COURT:** I have been up here paying attention to  
25 everything.

1 (Laughter.)

2           **MR. VERHOEVEN:** Now you've lost my train of thought,  
3 Your Honor.

4           **BY MR. VERHOEVEN**

5           **Q.** In your view, everybody understood that -- and you  
6 communicated to everybody, that Stroz's work wasn't done by  
7 that date; right?

8           **A.** Correct.

9           **Q.** Now, in April, before April 11th, Uber's lawyers at  
10 Morrison Foerster asked Stroz to provide at least some  
11 preliminary findings before April 11th; right?

12          **A.** Correct.

13          **Q.** And let's look at Exhibit 7912.

14           **MR. VERHOEVEN:** And I wonder if that could be admitted  
15 into evidence, Counsel?

16           **MR. BRILLE:** 7912 is already in evidence.

17           **MR. VERHOEVEN:** Oh, it's in evidence already. I  
18 apologize, Your Honor. It's the summary report.

19           **THE COURT:** All right. It's already in. Go ahead.

20           **BY MR. VERHOEVEN**

21          **Q.** And, you know, I don't need to use this unless you need  
22 your recollection refreshed, so let's just go quickly.

23           These interim reports that you provided were given long  
24 before the investigation was completed; right?

25          **A.** We completed the investigation with about three or four

1 more actual weeks of work after this.

2 **Q.** Let's look at -- we'll just pull it up. 7912, let's go to  
3 page 3.

4 **A.** Yes.

5 **Q.** And pull up the paragraph that starts "In April 2016."  
6 (Document displayed)

7 **A.** Yes.

8 **Q.** It says:

9            "In April 2016, in the lead-up to Uber's signing  
10          an agreement to purchase Ottomotto, and long before  
11          the investigation was completed, Morrison asked Stroz  
12          to provide it with visibility."

13          And then it goes on. Do you see that?

14 **A.** Yes.

15 **Q.** That's accurate; right?

16 **A.** Yes.

17 **Q.** And then it says:

18            "Specifically, Morrison" --

19          And, again, that's the law firm representing Uber; right?

20 **A.** Correct.

21 **Q.** (As read)

22            "-- sought access..."

23          And he lists some things. The first one:

24            "(a) Stroz Friedberg's memoranda regarding its  
25          interviews with Levandowski and Ron."

1      **A.**    Correct.

2      **Q.**    Do you see that?

3                And that's Anthony Levandowski and Lior Ron; correct?

4      **A.**    Yes.

5      **Q.**    And, in fact, you provided those interview summaries to  
6                Uber's attorneys before April 11th; right?

7      **A.**    Correct.

8      **Q.**    And let's -- let's just stop there with (a) and talk about  
9                that for a second.

10                **MR. VERHOEVEN:** So the diligenced employees'

11                interviews, I'd like to introduce Exhibit 7111 into evidence.

12                Is there any objection?

13                **MR. BRILLE:** No objection.

14                **THE COURT:** Thank you. Received in evidence.

15                **MR. VERHOEVEN:** Is that in?

16                **THE COURT:** Yes, it's in.

17                (Trial Exhibit 7111 received in evidence.)

18                **MR. VERHOEVEN:** And can we bring up the top of it?

19                (Document displayed.)

20                **BY MR. VERHOEVEN**

21      **Q.**    And you see this is from Stroz; correct?

22      **A.**    Correct.

23      **Q.**    And it's dated April 2, 2016. So that's before the  
24                April 11th date; correct?

25      **A.**    Correct.

1     **Q.**   And it's "Re: Draft Summary Interview of Anthony  
2       Levandowski"; right?

3     **A.**   Yes.

4     **Q.**   Now, this memorandum is labeled as a Draft in the subject  
5       line, but this is the most current and up-to-date version of  
6       the interview memorandum; correct?

7     **A.**   I believe that's right.

8              **THE COURT:**   That's unclear to me. You mean -- you  
9       mean, as of even today that this is the most current and  
10      up-to-date version, even as of today? And by that, I mean  
11      there was no subsequent --

12             **THE WITNESS:** Yes. We should probably have taken the  
13      "Draft" off of it when we finalized it. But as it was produced  
14      to Morrison & Foerster on April 2nd, it is the final version  
15      essentially.

16              **THE COURT:** Okay. I got it now. Thank you.

17              Go ahead.

18              **BY MR. VERHOEVEN**

19     **Q.**   So for the record, even though this says "Draft," it's the  
20      final version; right?

21     **A.**   To the best of my recollection, yes.

22     **Q.**   And this summarizes your team's interview with  
23      Mr. Levandowski on April 2nd; correct -- or, I'm sorry, on  
24      March 22 and March 23; correct?

25     **A.**   Correct.

1 Q. Now, let's go to page 4 of 7111 --

2 MR. VERHOEVEN: One second, Your Honor.

3 (Counsel confer off the record.)

4 BY MR. VERHOEVEN

5 Q. Let's go to the first page of the interview summary. And  
6 the second page --

7 MR. VERHOEVEN: I'm sorry, Your Honor. I have a typo  
8 on my... .

9 Page 4. There you go. Perfect.

10 And the third full paragraph down, can you pull it up,  
11 please?

12 (Document displayed.)

13 BY MR. VERHOEVEN

14 Q. So this is Stroz saying that:

15 "As discussed in more detail below in the  
16 Personal Devices section, Levandowski identified three  
17 places on his Apple MacBook Pro laptop where  
18 Google-related information was stored: (1) downloads  
19 folder; (2) Dropbox folder; and (3) his Chauffeur  
20 folder."

21 So he identified for you that there were Google documents  
22 on his laptop, and you put that in the interview summary;  
23 right?

24 A. Yes. When he came in for his interview to our offices and  
25 displayed his Apple MacBook Pro, we asked him, was there any

1 Google confidential information or Google-related information  
2 on that computer, and he pointed us to these particular folders  
3 on the computer as having Google information in it.

4 **Q.** And you -- you forwarded this information contained in  
5 this interview summary to Uber's attorney prior to April 11th;  
6 right?

7 **A.** Yes.

8 **Q.** Now, Mr. Levandowski also admitted in his interview that  
9 he had retained what he referred to as a Drobo 5D device used  
10 to store Google confidential information.

11 Do you remember that?

12 **A.** That's not quite what he said, but that's --

13 **Q.** Let's go to page 15. Let's not make any -- let's make  
14 sure we're there.

15 We're at page 15?

16 **A.** Yes.

17 **Q.** Top paragraph.

18 (Document displayed.)

19 **Q.** So let me just read what it says:

20 "In addition, while Levandowski was searching his  
21 home to gather all devices for the due diligence, he  
22 discovered that he possessed Google proprietary  
23 information on five disks of his Drobo 5D. The  
24 Drobo 5D was located in a closet in a guestroom that  
25 he used to store old/unused devices. The information

1 included source code, design files, laser files,  
2 engineering documents, and software related to the  
3 self-driving car."

4 So you put that in there in the interview summary and sent  
5 that on to Uber's attorneys; right?

6 **A.** Yes. My only issue was -- I just want to make clear that  
7 in that interview he had claimed that as of the date of the  
8 interview, he had destroyed that material.

9 **Q.** I'm going to get to that.

10 **A.** Yeah. Fine. So I just wanted to make that clear.

11 **Q.** Okay.

12 **A.** But, yes, he admitted that at one point he had located  
13 this Drobo 5D in his closet and it had those Google-related  
14 information in it.

15 **Q.** And for the record, a Drobo 5D is an enclosure for  
16 removable storage media; correct?

17 **A.** Correct.

18 **Q.** So you store information on disks in there?

19 **A.** Correct. It has five disks in it.

20 **Q.** And a Drobo 5D, you can sync that with a computer or a  
21 laptop and then move information from the disk to the laptop or  
22 vice-versa; right?

23 **A.** Correct.

24 **Q.** Now, Mr. Levandowski told Stroz -- and this is getting to  
25 your point -- that after discovering the Drobo with the Google

1 confidential information on it, he informed Uber executives  
2 about it. Remember that?

3 **A.** Yes.

4 **Q.** And the interview summary has his rendition of what  
5 happened at this meeting; correct?

6 **A.** Correct.

7 **Q.** I direct your attention to page 15, the third paragraph.  
8 (Document displayed.)

9 **MR. BRILLE:** Your Honor, I'm going to object to this  
10 as hearsay.

11 **THE COURT:** All right. Can I see the paragraph?

12 **MR. VERHOEVEN:** Yes, you may, Your Honor. It's on the  
13 screen.

14 **MR. BRILLE:** Your Honor, should we take it down while  
15 you're looking at it?

16 **THE COURT:** You can take it down everywhere else,  
17 but --

18 **MR. VERHOEVEN:** It's admitted into evidence. It's  
19 already admitted.

20 **MR. BRILLE:** Your Honor, our understanding of your  
21 prior rulings were that these documents were admitted subject  
22 to specific objections to hearsay within hearsay. That is what  
23 my objection is to this particular passage.

24 **THE COURT:** Well, can I have -- was it already -- it  
25 was admitted into evidence a few moments ago, I guess.

1           **MR. VERHOEVEN:** Yeah. My understanding was, Your  
2 Honor, that specific documents had to be -- could be objected  
3 to for hearsay within hearsay, but if there's no objection to  
4 hearsay and it's admitted, then it's admitted.

5           **THE COURT:** Well, can you put it up on the screen for  
6 me to read and no one else? Is that doable? Or is that  
7 beyond --

8           **MR. VERHOEVEN:** I can hand it up to you.

9           **THE COURT:** Here it comes.

10          (Whereupon document was tendered to the Court.)

11          **THE COURT:** And the page number again?

12          **MR. VERHOEVEN:** It is page 15, third paragraph. And  
13 we're talking about basically the first half of the paragraph  
14 that recounts a discussion.

15          **THE COURT:** 15? Page 15?

16          **MR. VERHOEVEN:** Yes, sir. Third paragraph. And just  
17 for Your Honor's background --

18          **THE COURT:** The one that says "Once he discovered"?

19          **MR. VERHOEVEN:** Yes.

20          **THE COURT:** Just a minute.

21          **MR. PERLSON:** So can I just tell you who these people  
22 are?

23          **THE COURT:** Well, I think I know all the names.

24          **MR. VERHOEVEN:** Okay.

25          (Brief pause.)

1                   **THE COURT:** Now, at the date of the interview, was  
2 Levandowski -- he was with Ottomotto; right?

3                   **MR. VERHOEVEN:** That's correct, Your Honor. As was  
4 Mr. Ron.

5                   **THE COURT:** And are they the sources of this  
6 information?

7                   **MR. VERHOEVEN:** Mr. Levandowski is on this particular  
8 paragraph.

9                   And, of course, all these people are -- all of these --  
10 the most obvious response to the objection is a party admission  
11 is not hearsay under the Federal Rules.

12                  **THE COURT:** All right. So I'm going to allow this,  
13 but let me give a slight cautionary note to the jury.

14                  This is a -- ordinarily a hearsay document. However, for  
15 reasons I don't need to go into now, it falls within an  
16 exception and can come into evidence for all purposes.

17                  Except I give you a word of caution that occasionally it  
18 refers -- even if Levandowski said these things to the witness  
19 on the stand, he is in some of these instances repeating  
20 something somebody else told him.

21                  And you all know how hearsay can get out of hand. When I  
22 say something to you and you say something, pretty soon it gets  
23 completely goofed up.

24                  So you need to take into account the possibility that in  
25 the recounting of what it is that somebody told Levandowski,

1 that Levandowski got it a little off, or maybe a lot off, or it  
2 could be completely untrue. It could be completely true.

3 I trust you to give it good critical analysis and think  
4 about it for yourself. That's all I need to say at this point  
5 to the jury.

6 So why don't you -- let's read -- show the jury the entire  
7 paragraph, I guess is what we ought to do.

8 **MR. VERHOEVEN:** Thank you, Your Honor.

9 (Document displayed.)

10 **BY MR. VERHOEVEN**

11 **Q.** Now, before we get into this paragraph, Mr. Friedberg, in  
12 context, you're conducting an investigation. And it's your  
13 understanding, correct me if I'm wrong, that -- your  
14 expectation is that these individuals would come in and tell  
15 the truth at their interviews; right?

16 **A.** When you're doing an investigation, you hope people tell  
17 the truth, and sometimes they do and sometimes they don't. So  
18 our job was to, to some degree, try to sort that out and figure  
19 out what was the truth about what happened.

20 **Q.** But the folks you were interviewing were supposed to tell  
21 you the truth; right?

22 **A.** Supposed to, yes.

23 **Q.** And they were supposed to preserve evidence, weren't they?

24 **A.** That's a very complex question that covers a whole bunch  
25 of different events. So to some degree, yes; but to some

1 degree -- you know, in Levandowski's case, there's an argument  
2 that to the extent that he had Google confidential information,  
3 you know, he was trying to delete the material in a normal  
4 course --

5 **Q.** That's --

6 **A.** -- because he wasn't allowed to bring it over.

7 **Q.** That's not what I'm asking.

8           **THE COURT:** No, no, no. He was responding to your  
9 question.

10          **MR. VERHOEVEN:** Okay.

11          **THE COURT:** It was a fair comment by the witness, so I  
12 -- you're -- I think you ought to -- you went to a lot of  
13 trouble to get me to rule on this, so let's let the jury -- let  
14 the jury read that paragraph. So put it up on the screen.

15          **MR. VERHOEVEN:** I'll circle back to that then. Let's  
16 put it back on the screen.

17           (Document displayed.)

18          **BY MR. VERHOEVEN**

19 **Q.** Now, this is -- by way of background, this is discussing  
20 the Drobo 5D; right?

21 **A.** Yes.

22 **Q.** Yes?

23 **A.** Drobo 5D, yes. The disks in the Drobo 5D, not the  
24 enclosure.

25 **Q.** So the summary says:

1                   "Once he discovered that he possessed this  
2 information, Levandowski contacted his attorney, John  
3 Gardner, and Lior Ron."

4                   And then it goes down further and talks about a meeting at  
5 Uber.

6                   **MR. VERHOEVEN:** So can we highlight that.

7                   **BY MR. VERHOEVEN**

8                   **Q.** Meeting at Uber in early March 2016. And the folks at the  
9 meeting included Travis Kalanick, Uber's CEO; Cameron  
10 Poetzscher, Uber's head of business development; and Nina Qi, a  
11 member of the business development group; right?

12                  **A.** Yes.

13                  **Q.** And the interview summary says -- and this is  
14 Levandowski's version:

15                   "Levandowski told them that he found some  
16 Google-related files and that he wanted to get rid of  
17 them. He told them that there's 'stuff on them that I  
18 don't want you to have and you don't want to have.'"

19 Is that right?

20                  **A.** Yes. That's what he said happened in the meeting.

21                  **Q.** And then it continues:

22                   "Poetzscher said that Ron and Levandowski should  
23 not delete the disks so that Uber could understand  
24 what was on them (for preservation and recordkeeping  
25 purposes)."

1           Do you see that?

2       **A.** Yes.

3       **Q.** And that was what the protocol was; right? You weren't  
4 supposed to delete stuff off the devices, is part of the  
5 protocol?

6       **A.** This happened before we met with Levandowski and Ron. So  
7 they came in on the --

8       **Q.** Can you answer my -- can you answer my question?

9           **THE COURT:** Well, he -- his answer's a fair -- you're  
10 saying that the comment about the destruction of the disks,  
11 that if it is true, occurred before you got involved.

12          Is that -- is that what you're saying? Tell us clearly  
13 what you're trying to say.

14           **THE WITNESS:** It -- it's a little more complicated  
15 than that because the -- the engagement letter contemplated  
16 that these individuals would come to us with their devices.  
17 And that engagement letter was entered into as of March, early  
18 March.

19          This meeting took place in the March 11th, March -- around  
20 March 11th area, but they didn't come to us, and we didn't have  
21 any contact with Levandowski or Ron until March 22nd.

22          So I don't know whether they were -- I can't remember  
23 whether they were aware of the protocol --

24           **THE COURT:** Who's "they"?

25           **THE WITNESS:** Sorry. Levandowski and Ron. I don't

1 know if they were aware of the protocol at this time --

2           **THE COURT:** At what time?

3           **THE WITNESS:** At the time of this meeting, which  
4 supposedly was on March 11th.

5           **THE COURT:** All right. Next question.

6           **BY MR. VERHOEVEN**

7           **Q.** Let me just foundationally: You were retained before the  
8 March 11 meeting; right?

9           **A.** Yes.

10          **Q.** And there was a protocol that was in place before the  
11 March 11 meeting; right?

12          **A.** Correct.

13          **Q.** Okay. And that protocol included that the diligenced  
14 employees should not delete information on their devices;  
15 correct?

16          **A.** Correct.

17          **Q.** Okay. You don't know what Uber's attorney said to  
18 Levandowski, but you know that; right?

19          **A.** Correct. I don't know whether that was communicated to  
20 them.

21          **Q.** Okay. All right. But doing -- doing that was -- whoever  
22 said it, whoever knew about it, just the fact of doing that  
23 violated the protocol, didn't it, sir?

24          **A.** I think that's a complicated issue, but for the reason  
25 that there's -- for the reason that there's potentially an

1 obligation to delete data that they identify --

2 Q. I didn't ask you about your legal analysis of the  
3 obligation. The protocol said don't do it; right?

4 A. The protocol contemplated that they could come to us with  
5 the devices that they had, yes.

6 Q. Without deleting information?

7 A. Correct.

8 Q. And they -- and Mr. Levandowski is saying here he deleted  
9 five disks of information; right?

10 A. Correct.

11 Q. And that's a violation of the protocol; right?

12 A. I would say that if he saw that protocol and he knew the  
13 protocol, it would have been -- it would have been a violation  
14 of it, yes. I just don't know whether it was an intentional  
15 violation of the protocol on his behalf.

16 Q. Okay. I'm not asking you to interpret whether there's an  
17 intentional requirement in the protocol. The protocol says  
18 you're not supposed to delete stuff off your devices; right?

19 A. I don't remember that it -- I don't think it says that.  
20 It just says that they are expected to come in with their  
21 personal devices for us to examine.

22 Q. All right. We'll get to the specifics of that in a  
23 minute. Let's keep going with this summary.

24 So let's go back. I think we're talking about:

25 "Levandowski told them that he found some

1 Google-related files and that he wanted to get rid of  
2 them. He told them that there is 'stuff on them I  
3 don't want you to have and don't' -- or 'stuff on them  
4 I don't want you to have and don't'" --

5 **THE COURT:** "And you don't want to have."

6 **MR. VERHOEVEN:** -- "'and you don't want'" -- thank  
7 you, Your Honor. It's getting late.

8 **BY MR. VERHOEVEN**

9 **Q.** -- "'and you don't want to have.'"

10 Then:

11 "Poetzscher stated that Ron and Levandowski  
12 should not delete the disks so that Uber could  
13 understand what was on the disks (for preservation and  
14 recordkeeping purposes)."

15 Then "Kalanick" -- that's the then CEO of Uber; correct?

16 **A.** Yes.

17 **Q.** -- "responded that they should not take the advice of  
18 Poetzscher and that if Ron and Levandowski possessed Google  
19 information, he did not want to know about it and did not want  
20 it at Uber.

21 Kalanick told Levandowski to, quote, do what he needed to  
22 do, closed quote.

23 Do you see that?

24 **A.** Correct.

25 **Q.** (As read)

1                   "Levandowski understood this statement to mean  
2                   that Kalanick wanted Levandowski to destroy the disks,  
3                   so he told Kalanick that he would destroy them. In  
4                   response, Kalanick nodded. Poetzscher appeared  
5                   uncomfortable with this decision. Qi was quiet but  
6                   appeared to be amused and astonished."

7                   And then it continues:

8                   "After the meeting ended, Levandowski took the  
9                   disks to a shredder in Oakland near the airport and  
10                  had the disks destroyed."

11                  And that is what was in the interview summary that you  
12                  sent to Uber's attorney before April 11th; correct?

13                  **A.**      Correct.

14                  **MR. VERHOEVEN:**   Can we put up TX-81 -- well, let me  
15                  just ask, can we admit TX-81? This is, for the record,  
16                  Attachment A that details the diligenced employee due diligence  
17                  process.

18                  **THE COURT:**    Somebody is hacking and coughing back  
19                  there. Do you need a cough drop?

20                  I need the jury to have the undivided attention of the  
21                  lawyers and when you bring up static from the rear, we can't  
22                  hear up here. So please remain quiet or go out in the hallway.

23                  Mr. Verhoeven, what is the problem? Let's move this  
24                  along.

25                  **MR. VERHOEVEN:**   This is Exhibit A to the term sheet.

1 There's no objection to the term sheet, is there?

2 Thank you.

3 **THE COURT:** What is Exhibit 81?

4 **MR. VERHOEVEN:** TX-81. I'll represent it's Exhibit A  
5 to the February 22 term sheet, which we'll introduce as well,  
6 Your Honor.

7 **THE COURT:** All right. Any objection?

8 **MR. BRILLE:** I think he can lay a foundation. I don't  
9 know if this witness has ever seen it.

10 **THE COURT:** Well, it's not in evidence yet, but  
11 proceed. I'm not going to proceed without me at least looking  
12 at it.

13 Are you going to have another witness who can put this  
14 into evidence, Mr. Verhoeven?

15 **MR. VERHOEVEN:** You know what? I'll do this --  
16 connect the dots when I talk to him about the term sheet, Your  
17 Honor.

18 **THE COURT:** All right. Great.

19 **MR. VERHOEVEN:** Thank you.

20 **BY MR. VERHOEVEN**

21 **Q.** Now, Stroz -- Stroz, I'm sorry -- conducted an  
22 investigation to try and determine whether Levandowski had, in  
23 fact, destroyed the disks as he claimed; correct?

24 **A.** Correct.

25 **Q.** And as of April 11th, Stroz was unable to confirm that he

1 had destroyed those disks; isn't that true?

2 **A.** We were not able to obtain definitive information that he  
3 had destroyed them; correct.

4 **Q.** Now, there's a second piece of information --

5 **MR. VERHOEVEN:** I don't know if we still have that A,  
6 B, C slide from the Stroz report.

7 **BY MR. VERHOEVEN**

8 **Q.** Maybe you can just remember.

9 A second piece of interim information that was provided  
10 before April 11th was something called a "Last Accessed  
11 Report." Do you recall that?

12 **A.** Yes, I do.

13 **Q.** And that title means that Stroz is trying to figure out  
14 the most recent date on which files, certain files in  
15 Levandowski's self-identified folders, were accessed; correct?

16 **A.** Correct.

17 **Q.** And prior to April 11th, Stroz was able to identify that  
18 347 files from Levandowski's self-identified data had been  
19 accessed between September 1, 2015, and March 22, 2016;  
20 correct?

21 **A.** I don't remember the exact dates off the top of my head.  
22 It was 347 files. Those dates seem approximately right.

23 And the conclusion was that the forensic metadata showed  
24 that the files had been accessed either by him personally  
25 taking some action with respect to those or by some

1 automatic -- automated process touching those files, yes.

2 **Q.** I'll represent that that spreadsheet is attached as  
3 Exhibit 16 to your Stroz report. Does that sound right?

4 **A.** There were a number of last-accessed spreadsheets, so I --  
5 the one related to the self-identified documents that was 347  
6 files, I don't remember the exhibit number.

7 **MR. VERHOEVEN:** Let's show Exhibit 7114.

8 Is there any objection to this exhibit?

9 **MR. JACOBS:** No objection.

10 **MR. VERHOEVEN:** If you'll put it up, please.

11 **THE COURT:** It's in evidence.

12 (Trial Exhibit 7114 received in evidence.)

13 (Document displayed.)

14 **BY MR. VERHOEVEN**

15 **Q.** Does this refresh your recollection that this is a --  
16 well, it's not a refresh your recollection.

17 This is the last-accessed sheet or spreadsheet that you  
18 created; correct?

19 **A.** Correct.

20 **Q.** And just to walk through how it works, there's four  
21 columns; right?

22 **A.** Correct.

23 **Q.** And a "Row" is the first one and that's numerical?

24 **A.** Correct.

25 **Q.** And then "File Extension" tells you the type of file; is

1 that right?

2 **A.** Yes.

3 **Q.** Then the "Last Accessed" tells you the last accessed date;  
4 correct?

5 **A.** Yes.

6 **Q.** And "Notes" gives a summary of what's in the file; right?

7 **A.** Yes. It was a -- we created that summary. It doesn't  
8 come directly from the computers.

9 **Q.** Correct. And you -- Stroz, I should say, sent this  
10 document to Uber's attorneys prior to April 11th; correct?

11 **A.** Yes, sir.

12 **Q.** As part of your interim report; correct?

13 **A.** Correct.

14 **Q.** And let's see what this -- what this shows. At Row 1:

15                 "Aspen confidential and proprietary presentation  
16                 re self-driving car."

17                 Aspen is Google; right?

18 **A.** Correct.

19 **Q.** It's the code name for Google.

20                 So Uber knew he had a Google confidential and proprietary  
21 presentation regarding self-driving cars on his laptop and it  
22 appears to be last accessed in March; right?

23                 **MR. BRILLE:** Objection. Foundation, speculation.

24 **BY MR. VERHOEVEN**

25 **Q.** You sent this to Uber --

1                   **THE COURT:** Sustained for now.

2                   **BY MR. VERHOEVEN**

3                   **Q.** You sent this to Uber; right?

4                   **A.** We sent this document to Uber, yes.

5                   **Q.** And --

6                   **A.** Not Uber. To Uber's outside counsel, Morrison & Foerster.

7                   **Q.** Uber's attorney?

8                   **A.** Correct.

9                   **Q.** And then if you look through this -- for example, go to  
10 Row 10:

11                         "Aspen confidential and proprietary  
12 presentation."

13 Go to Row 17:

14                         "Picture of a component of a self-driving car."

15 Row 106: Another:

16                         "Aspen confidential presentation re self-driving  
17 car."

18                   **A.** Yes.

19                   **Q.** That's Google; right? Last accessed March 10.

20 Go to 111: Aspen -- another Aspen confidential  
21 presentation regarding self-driving car, accessed March 10.

22 112:

23                         "Spreadsheet containing a list of parts,  
24 quantities, and costs."

25 119: Another Aspen confidential and proprietary

1 presentation.

2 120 --

3 **THE COURT:** You've got to ask a question every now and  
4 then.

5 (Laughter.)

6 **THE COURT:** Has he read it correctly?

7 **THE WITNESS:** Yes, he did.

8 **BY MR. VERHOEVEN**

9 **Q.** Have I read this correctly?

10 And if you -- it goes on and on, doesn't it, sir, with  
11 Aspen information?

12 **A.** It identifies Aspen or Google confidential information as  
13 having been in that Chauffeur folder, yes.

14 **Q.** A lot of it; right?

15 **A.** There are 347 files in this particular exhibit.

16 **Q.** And, again, Stroz sent this to Uber's attorney before the  
17 decision was made to acquire Ottomotto on April 11th; correct?

18 **A.** Again, I don't know what the nature of the corporate event  
19 was on April 11th. I believe it's a put-call agreement. But  
20 if that's what you're referring to, yes, we sent it to them  
21 before that date.

22 **MR. VERHOEVEN:** Just trying to edit myself, Your  
23 Honor.

24 **BY MR. VERHOEVEN**

25 **Q.** Now, as of April 11th, beyond this spreadsheet and the

1 interview summaries we talked about, Stroz hadn't been able to  
2 do anything else; right? In other words, Stroz hadn't been  
3 able to forensically examine the devices; correct?

4 **A.** Not exactly so, but we had in process -- we were  
5 processing it on 1.5 million files. We were starting our  
6 forensic work on all the other diligenced employees' devices.

7 So we were in the process in that early April period of  
8 ramping up the investigation and dealing with the huge amount  
9 of data. We just hadn't reported out on it yet.

10 So it's not as if we weren't doing anything, but as of  
11 April 11th, we weren't in a position to report out on that.

12 **Q.** As of April 3rd, you reviewed less than 1 percent of the  
13 500 gigabytes, not to mention all the other stuff; right?

14 **A.** Yes. I'm just saying there was work being done between  
15 April 3rd and April 11th. We just didn't report out on it  
16 before April 11th.

17 **Q.** Before April 11th Uber's lawyers had not instructed you to  
18 do an analysis to determine whether Mr. Levandowski's Drobo  
19 device had been connected to his other machines that he brought  
20 in; is that right?

21 **A.** That analysis happened later.

22 **Q.** And an external media connection analysis is very  
23 important for a forensic analysis, isn't it?

24 **A.** Yes.

25 **Q.** It allows you to follow the trail of a file that might

1 have been transferred; right?

2 **A.** Correct.

3 **Q.** Now, let's move on to your ultimate report. And this is  
4 the one that was dated, I guess, August 5th, as we looked at  
5 it, that's in evidence.

6 Actually, let's start after April 11th and move to that.

7 **A.** Okay.

8 **Q.** So isn't it correct that after April 11th, in mid-April,  
9 Uber put your investigation on a hiatus?

10 **A.** Yes. We were pens down for a number of weeks.

11 **Q.** And your investigation didn't resume until July?

12 **A.** Correct.

13 **Q.** And isn't it the case that once the investigation resumed,  
14 Stroz identified key issues that were only identified after  
15 Uber had signed this put-call agreement on April 11th?

16 In other words -- let me ask it differently. Isn't it the  
17 case that additional key issues were identified after  
18 April 11th?

19 **A.** Yes. We made substantial findings after 11th, April 11th,  
20 and substantial findings before as well.

21 **Q.** For example, after April 11th, Stroz performed a forensic  
22 analysis of Mr. Levandowski's laptop; correct?

23 **A.** Yes. We completed our investigation of his laptop after  
24 April 11th.

25 **Q.** And that also -- that forensic -- there's a forensic

1 report prepared on that; correct?

2 **A.** Correct.

3 **Q.** And that summarizes Stroz's analysis of file copy or  
4 transfer activity; correct?

5 **A.** Correct.

6 **MR. VERHOEVEN:** I'd like to move into evidence Exhibit  
7 5101. Any objection?

8 **MR. BRILLE:** No objection.

9 **THE COURT:** 5101 is in evidence.

10 (Trial Exhibit 5101 received in evidence.)

11 (Document displayed.)

12 **BY MR. VERHOEVEN**

13 **Q.** Can you identify for the jury what is Exhibit 5101?

14 **A.** This is our report on the forensic examination of Anthony  
15 Levandowski's -- could you scroll down for a minute?

16 **Q.** Sure.

17 **A.** Let me just look at it.

18 **Q.** It's in your binder as well.

19 **A.** Yes, of Anthony Levandowski's devices and Webmail  
20 accounts. We collected, I believe, nine physical devices from  
21 him and nine cloud-based repositories, including Webmail,  
22 Dropbox, and other cloud-based repositories of data.

23 So I think there were a total of 18 sources of data. And  
24 this is the report of our analysis -- our forensic analysis of  
25 primarily the devices.

1   **Q.**   And I direct your attention to line 3(a) of this report --  
2   page 4, I'm sorry. I direct your attention to page 4.

3   **A.**   Yes.

4   **Q.**   And if you look at the "Stroz identified" paragraph under  
5   the box.

6                 **MR. VERHOEVEN:**   Can you pull it out, please?

7                 (Document displayed.)

8                 **BY MR. VERHOEVEN**

9   **Q.**   Can you see there's lines 1, 2, 3, 4?

10   **A.**   Yes.

11   **Q.**   And so I'm directing your attention to 3(a).

12                 **MR. VERHOEVEN:**   If you had could highlight 3(a), the  
13   whole thing.

14                 **BY MR. VERHOEVEN**

15   **Q.**   So this is a -- this is an analysis of Mr. Levandowski's  
16   personal laptop; right?

17   **A.**   Correct.

18   **Q.**   And it says:

19                 "Stroz identified evidence of several deleted  
20   files and folders. Specifically," then it goes on.

21   Then to 3(a), it says:

22                 "...approximately 24,000 files."

23   So those had been deleted; right?

24   **A.**   Yes.

25   **Q.**   (As read)

1               ""... of which were located in the folder  
2               users/anthony/desktop/boards/chauffeur-svn/.svn."

3               Do you see that?

4       **A.** Yes.

5       **Q.** Can you explain to the jury what that is, that thing I  
6 just read?

7       **A.** That's the file path where the documents are, so the  
8 subdirectors and the subfolders as to where those 24,000  
9 documents were.

10      **Q.** And what does it tell you, this file path?

11      **A.** Well, it specifically shows you that the user name was --  
12 the user profile was Anthony. That's his profile. And it was  
13 on the desktop in a folder called boards, and then a subfolder  
14 called chauffeur/svn, and then in a further folder called .svn.

15      **Q.** Okay. The sentence continues that these were located on  
16 this folder but then were moved to trash on or around  
17 December 14, 2015.

18      **A.** Yes.

19      **Q.** So they were -- they were destroyed or deleted, at least  
20 this particular folder, on December 14th, 2015; is that right?

21      **A.** Yes.

22      **Q.** And that's what you determined?

23      **A.** Yes.

24      **Q.** You weren't able to forensically recover these 24,000  
25 files; correct?

1     **A.**   No.

2     **Q.**   If you look at line 4, it says:

3                 "Approximately 20,000 files were deleted between  
4                 February 8th to February 9, 2016."

5                 Do you see that?

6     **A.**   Yes --

7     **Q.**   And then it continues:

8                 "A majority of those files were located in  
9                 \_Source.sparsebundle and \_Boards.sparsebundle."

10                 Do you see that?

11     **A.**   Yes.

12     **Q.**   What did those -- are those code names? What are those?

13     **A.**   No. A sparsebundle is a name for essentially a compressed  
14         container of files. So it's a container of files that you use  
15         a compression utility on to make it smaller.

16     **Q.**   Now, do you notice a similarity between the board  
17         sparsebundle bundle and the file name for the 24,000 files?

18     **A.**   Not really. That's not how it works.

19     **Q.**   Do you see that they both have a reference to boards?

20     **A.**   Right. There is the name "boards" in both directories,  
21         but that doesn't --

22     **Q.**   And boards --

23     **A.**   I'm just saying it doesn't necessarily mean that there's a  
24         similarity in the files themselves that are in the folders.

25     **Q.**   The folders are similar?

1     **A.**   The folders have the same name in them, right.

2     **Q.**   One could conclude that perhaps the same files are in the  
3     folders with the same name. One is an encrypted file and one  
4     is not; right?

5     **A.**   That's speculation.

6     **Q.**   Did you look into it?

7     **A.**   I don't think we were able to determine that there was  
8     overlap between the 20,000 files that were deleted on  
9     February 8th and the 24,000 files that were deleted in December  
10    of 2015.

11    **Q.**   Stroz did not attempt to determine whether the 20,000  
12    files noted in line 4 were simply a sparsebundle bundle copy of  
13    the same 24,000 files noted in line 3; correct?

14    **A.**   No, that's not correct. I -- we didn't -- it's not that  
15    we didn't try to look at that; I don't think our ultimate  
16    conclusion was that they were the same files. I don't think we  
17    had enough information to make that conclusion.

18    **Q.**   So you couldn't tell one way or the other?

19    **A.**   Correct.

20    **Q.**   Earlier we were discussing the -- now we're still on your  
21    final report. We were talking earlier about your interim  
22    reports.

23    **A.**   Yes.

24    **Q.**   And we talked about learning some stuff about the Drobo 5D  
25    in the interview summary. Remember that? Just to set the

1 stage.

2 **A.** Yes.

3 **Q.** Okay. Now, in your final report you had some more  
4 information about the Drobo 5D; right?

5 **A.** Could you -- I would need more information about what  
6 you're questioning me about.

7 **Q.** Okay. Let's go to your Exhibit 5101, the forensic report,  
8 at page 5.

9 **A.** Okay.

10           **MR. VERHOEVEN:** And can we highlight from "Stroz  
11 identified" and get maybe half that list -- or the whole list?  
12           (Document displayed.)

13 **BY MR. VERHOEVEN**

14 **Q.** So this is from Stroz's forensic report on  
15 Mr. Levandowski; correct?

16 **A.** Correct.

17 **Q.** Okay.

18           "Stroz identified evidence of files accessed from  
19           the laptop to the Drobo 2 storage device."

20           And that's the same as the Drobo 5D we were talking about;  
21 right?

22           (Brief pause.)

23 **Q.** Do you not know?

24 **A.** I'm not sure about that.

25 **Q.** Well, the person who performed this analysis would know;

1 right?

2 **A.** Correct.

3 **Q.** And who was that?

4 **A.** Melanie Maugeri.

5 **Q.** It says:

6 "Evidence suggests that the Drobo 2 was used to  
7 back up the laptop. The most recent backup was dated  
8 February 8th, 2016."

9 **A.** Yes.

10 **Q.** (As read)

11 "The evidence suggests that the Drobo 2 was last  
12 connected to the laptop on March 8, 2016."

13 **A.** Yes.

14 **Q.** Right?

15 So your coworker took a look at the laptop and was able to  
16 determine that this Drobo 2 was accessed the last time in March  
17 and the entire thing was backed up in February; right?

18 **A.** That's right.

19 **Q.** And you understand that Mr. Levandowski had left Google by  
20 February; right?

21 **A.** I think it was January 26th.

22 **Q.** Right. So he was gone. He wasn't at Google anymore;  
23 right?

24 **A.** Correct.

25 **Q.** So let's remember those dates: February 8, 2016, and

1 March 8, 2016.

2 Now, let's go to Exhibit 7111, the Levandowski interview  
3 memo, and look at page 15.

4 **MR. VERHOEVEN:** Can we pull out "Levandowski stated,"  
5 that one paragraph?

6 **THE COURT:** The one we went over earlier?

7 **MR. PERLSON:** No. Different paragraph, Your Honor.  
8 Same interview summary.

9 **THE COURT:** The paragraph above that. Is that it?  
10 "Levandowski stated."

11 **MR. VERHOEVEN:** Yes, Your Honor. Exactly.

12 **THE COURT:** All right. So let's put that up on the  
13 screen so the jury can follow this.

14 **MR. VERHOEVEN:** Let's put them both on the screen.

15 (Document displayed.)

16 **BY MR. VERHOEVEN**

17 **Q.** This is -- so let's refresh. That's a great idea.

18 So the first paragraph is Mr. Levandowski's story that he  
19 told you at his interview; that he was just -- he was getting  
20 ready for the interview, searching his home to get all these  
21 devices to bring in, and he discovered these disks. And they  
22 were located in a closet in his guest bedroom that he used to  
23 store old, unused devices.

24 That's what he told you; right?

25 **A.** He didn't tell me that, but that's what he told my team

1 members, yes.

2 **Q.** And then in the next paragraph he said -- it's the second  
3 sentence I want you to look at.

4 **A.** Yes.

5 **Q.** Okay.

6 "He said the last time he used and/or accessed  
7 the information on the disk was in November/December  
8 2014, and possibly January 15."

9 Now, the forensic report that your coworker discovered  
10 talks about the Drobo 2 being accessed in February of 2016;  
11 right? And in March of 2016; correct?

12 **A.** Yes.

13 Can I just see that page again?

14 **MR. VERHOEVEN:** Can we put that back up?

15 **THE WITNESS:** I have it here. Thank you.

16 **MR. VERHOEVEN:** That's exhibit --

17 **THE WITNESS:** I have it.

18 **BY MR. VERHOEVEN:**

19 **Q.** You have it. Exhibit 5101, page 5.

20 **A.** Yes, that's right. February 16 and March 16.

21 **Q.** And we'll ask -- what was the name of the individual?

22 **A.** Melanie Maugeri.

23 **Q.** -- Ms. Maugeri whether this Drobo 2 relates to the  
24 Drobo 5D.

25 **A.** I think it does, but you should confirm it with her if

1 you're going to call her.

2 Q. So you now think you're kind of refreshed on that?

3 A. I think that's right.

4 Q. Yes. Okay.

5 And so the forensic report showed that he was being a  
6 little bit less than truthful, wasn't he?

7 A. It looks like the -- well, he's either not remembering it,  
8 although it was pretty close -- you know, we interviewed him  
9 pretty close in time to those two events. We interviewed him  
10 March 22nd. So the events are earlier in March. And then just  
11 in February.

12 So it was either not remembering it correctly or possibly  
13 not being truthful about it.

14 Q. Well, let's look what he said in his interview memo again.  
15 7111, at page 15. "In addition" -- this is your summary of his  
16 interview?

17 A. Yes.

18 Q. (As read)

19 "While Levandowski was searching his home to  
20 gather all devices, he discovered that he had this."

21 Right? It was located in a closet in the guest room that  
22 he used to store old unused devices.

23 That's not credible now that you know the last accessed  
24 dates of this Drobo 2, is it, sir?

25 A. Probably not.

1       **Q.**    He wasn't telling the truth, was he?

2       **A.**    Again, I'm not the ultimate decider of, you know, sort of  
3           truth and, you know, the credibility of it. But it certainly  
4           would -- gave us pause.

5       **Q.**    And this report was provided to Uber; right?

6       **A.**    Yes. "This report" meaning the final report?

7       **Q.**    That's correct.

8       **A.**    The final report was provided to Uber's outside counsel  
9           and inside counsel in -- on August 5th.

10      **Q.**    Yes. It was given to Uber's attorney; right?

11      **A.**    Attorneys, yeah.

12      **Q.**    Eric Tate of Morrison & Foerster?

13      **A.**    Eric Tate of Morrison & Foerster, yes.

14                   **THE COURT:** All right. Is this a good place to break  
15                  for the day?

16                   **MR. VERHOEVEN:** Yes, Your Honor.

17                   **THE COURT:** Great. Good.

18                  We're going to break. I want to give you a heads-up. By  
19                  my math the plaintiff has used up 40 percent, almost, of their  
20                  time, and the other side not quite as much. But we are making  
21                  good progress.

22                  I thank you for your close attention. And, please,  
23                  remember all of my admonitions. We'll see you back here  
24                  tomorrow at the normal time.

25                   **THE CLERK:** All rise for the jury.

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1 (Jury exits the courtroom at 12:59 p.m.)

2       **THE COURT:** All right. Be seated.

3       The witness may -- you have to be back here at 7:30 in the  
4 morning.

5       **THE WITNESS:** Yes, sir.

6       **THE COURT:** Can you do that?

7       **THE WITNESS:** No problem.

8       **THE COURT:** All right. We'll see you then.

9       **MR. VERHOEVEN:** He flew in from New York, so he should  
10 be okay.

11       **THE COURT:** What?

12       **MR. VERHOEVEN:** He flew in from New York.

13       **THE COURT:** What do you mean, he flew to New York?

14       **MR. VERHOEVEN:** He's from New York. I'm just saying  
15 the time difference --

16       **THE COURT:** Oh, I see.

17       So you flew out here from New York?

18       **THE WITNESS:** Yes, sir.

19       **THE COURT:** I didn't realize that. Okay. Have a good  
20 day. We'll see you in the morning.

21       (Witness steps down.)

22       **THE COURT:** Counsel, here is my count. The plaintiff  
23 has used 377 of your 960 minutes, 377 out of your 960. The  
24 other side has used 186 of your 960. So there we go.

25       Anything I can do for the lawyers and help you with before

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1 we adjourn for the day?

2           **MR. GONZÁLEZ:** Very briefly, Your Honor. I know it's  
3 been a long day, and I don't want this to sound like a  
4 complaint, but today --

5           **THE COURT:** It will anyway; right?

6           **MR. GONZÁLEZ:** Well, today during the trial, Your  
7 Honor, the plaintiff withdrew the two witnesses who were  
8 supposed to be right after Mr. Kalanick. That caused us a  
9 problem because we then had to scramble to get the witnesses  
10 who were supposed to be after them here on time.

11          Now, we were able to do that today, but I just need -- you  
12 know, I've got a list here, Your Honor, of 11 or 12 witnesses,  
13 half of whom I wouldn't call if I were them. So I wanted to  
14 say two things.

15          Number one, they are running out of time, and I don't want  
16 to hear a complaint later that they need more time.

17          But number two is just a request that if they're going to  
18 withdraw some of these names, they please tell us before we're  
19 in court in trial, because it makes it difficult for us to get  
20 witnesses here when we're not given any notice.

21           **MR. VERHOEVEN:** A quick response, Your Honor.

22          Mr. McClendon was an eight-minute videotape that we  
23 withdrew. And I apologize Your Honor had to review that.

24          Mr. Poetzscher is somebody they're going to call in their  
25 case in chief anyway. And the reason that we made that

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1 decision was we didn't know what -- how the testimony of  
2 Mr. Kalanick would be. And these were hostile witnesses. And  
3 we have a burden of proof that we needed -- if we were unable  
4 to establish something, we needed this backup. So we had to  
5 give notice.

6 This would not be the -- I'd understand his complaint if  
7 this was a situation where these were our witnesses, but --  
8 and, frankly, I -- I told them about this and they agreed  
9 wholeheartedly.

10 So we're going to work together, but, you know, any notion  
11 that we're trying to play fast and loose is just unfounded.

12 **MR. GONZÁLEZ:** No, and that's not the notion, which is  
13 why I said I didn't want to make it sound like a complaint.  
14 It's just a request that we be given more notice.

15 If there's a witness that they think can be withdrawn if  
16 we stipulate to an exhibit, I'd just ask that we be given more  
17 notice so we can work that out and get our witnesses here on  
18 time. That's all.

19 And I did want to put on the record, though, Your Honor --  
20 and I know I already have -- I do have a concern that they're  
21 burning through their time, which is fine. But we're trying to  
22 be conservative on minutes. And I just don't want there to be  
23 an issue later where they're asking you for more time after  
24 we've been conservative on minutes, assuming the 960 is a real  
25 number.

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1 That's all.

2           **THE COURT:** Okay. Those two speeches do not come out  
3 of anybody's time.

4 (Laughter.)

5           **MR. GONZÁLEZ:** Your Honor, I do have -- I'm sorry --  
6 the page that you asked for for the juror binder.

7           **THE COURT:** What? Is that the -- is that the --

8           **MR. EISEMAN:** This contains the corrections that the  
9 parties agreed to, Your Honor.

10          **THE COURT:** All right. Hand that over to my Law  
11 Clerk, and we'll get it into the jury box tomorrow.

12          All right. I think you both have tried enough cases to  
13 know the right thing to do when you're going to cancel a  
14 witness.

15          And I'm not saying Waymo violated that or... Just try  
16 your best to cooperate, because when it's their turn, you're  
17 going to have the same problem and I'll give them as much  
18 flexibility as you're taking for yourself.

19          **MR. VERHOEVEN:** Understood, Your Honor.

20          **THE COURT:** Now, who are our next witnesses? Let's --  
21 give us a heads-up on the next two or three witnesses.

22          **MR. GONZÁLEZ:** On the list, Your Honor, they have  
23 Melanie Maugeri from Stroz; Bill Gurley; Eric Tate; Andy Crain,  
24 one of their technical experts; Matt Henley; Rick Jacobs, who I  
25 want to discuss for 30 seconds; Michael Janosko; Sasha --

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1           **THE COURT:** I just asked for two or three.

2           **MR. GONZÁLEZ:** I stopped reading, Your Honor.

3           **THE COURT:** All right. So here is what I -- the  
4 reason I bring it up is at some point the plaintiff has got to  
5 prove that these trade secrets found their way into the system,  
6 and that means we're going to close the courtroom. And I --  
7 for the benefit of the gallery, I would like to be efficient in  
8 doing that.

9           So can you come up with ways to avoid yanking the public  
10 in and out of the courtroom?

11           **MR. VERHOEVEN:** We've lumped it --

12           **THE COURT:** That's what I want you to think about.

13           **MR. VERHOEVEN:** We've lumped that all together, Your  
14 Honor. That's why it hasn't been dispersed in here. We're  
15 going to do that as a big tranche of witnesses altogether.

16           **THE COURT:** Tomorrow, are we going to reach that  
17 point?

18           **MR. VERHOEVEN:** I don't think so.

19           **MR. GONZÁLEZ:** I withdraw my comment about Mr. Jacobs.  
20 We're going to have a discussion.

21           **THE COURT:** All right.

22           **MR. VERHOEVEN:** It looks like we've exhausted the  
23 Court's patience anyway.

24           **THE COURT:** I don't know. I have an endless supply of  
25 patience.

PROCEEDINGS

1 Thank you. See you in the morning.

2 **MR. VERHOEVEN:** Thank you, Your Honor.

3 **THE CLERK:** Court in recess.

4 (Whereupon at 1:06 p.m. further proceedings  
5 were adjourned until Thursday, February 8, 2017  
6 at 8:30 a.m.)

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Katherine Sullivan

Katherine Sullivan, CSR 5812, CRR, RMR

Wednesday, February 7, 2018